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February 26, 1980

Mr. Michael V. Polito
U.S. Environmental Protection Agency
Region II, Emergency Response and
Inspection Branch
Raritan GSA Depost Building 209
Woodbridge Avenue
Edison, New Jersey 08817

Re: Department of Transportation v.
P.S.C. Resources, Inc.

Dear Mr. Polito:

As promised in our recent telephone conversation
herein please find a copy of the transcript of the deposition
conducted on October 22, 1979.

Thank you for your cooperation.

Very truly yours,

JOHN J. DEGNAN
Attorney General of New Jersey

By: Thomas J. Germin
Deputy Attorney General

TJG:cl

Enclosure

510306



**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO. L-17118-77**

**DEPARTMENT OF TRANSPORTATION :
of the State of New Jersey,**

Plaintiff,

vs.

**P.S.C. RESOURCES, INC.,
A Delaware Corporation, et al,**

**: DEPOSITION UPON
: ORAL EXAMINATION
: OF
: MICHAEL V. POLITO
: CLARENCE HALLOWELL**

Defendants.

.

**TRANSCRIPT of the deposition of MICHAEL V.
POLITO and CLARENCE HALLOWELL, called for Oral
Examination in the above-entitled matter, said
depositions being taken pursuant to Superior Court
Rules of Civil Practice and Procedure, by and before
RICK PACHE, a Notary Public and Certified Shorthand
Reporter of the State of New Jersey, at the
Environmental Protection Agency, Edison, New Jersey,
on Monday, October 22, 1979, commencing at 10:25
a.m.**



Reporters, Inc.

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DAVID P. STONE, ESQ.,
Attorney for the U.S. Environmental Protection
Agency

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-DIRECT</u>	<u>RE-CROSS</u>
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1 MICHAEL V. POLITO, having been duly
2 sworn according to law by the Officer,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. SHUR:

5 Q Mr. Polito, my name is Paul Shur and
6 I'm an attorney from the State of New Jersey and I
7 represent P.S.C. Resources which is a defendant in
8 the litigation that is the subject of your deposition
9 today.

10 Seated to my left is Dan Martin, another
11 attorney from the State of New Jersey. His client
12 is Newtown Refining Corporation. To my right is
13 Tom Germino, Deputy Attorney General, who represents
14 the plaintiff, the Department of Transportation in
15 this matter and seated to your left, I've been
16 introduced to Dave Stone who is Counsel for the
17 Environmental Protection Agency.

18 We're here today to take your deposition which
19 is a series of questions that I would like you to
20 answer regarding your personal knowledge of incidents
21 which is the subject of a lawsuit that the attorneys
22 today are concerned with.

23 This is a lawsuit filed by the Department of
24 Transportation of the State of New Jersey against
25 various corporate defendants who, at various times,

1 owned and operated an oil re-refining plant in
2 Kearny, New Jersey, located in the Hackensack
3 Meadowlands region. Have you ever had your deposition
4 taken before? A Oh, yes.

5 Q And are you familiar with the
6 procedure that we use in asking questions and getting
7 answers from you as to your own personal knowledge?

8 A Well, give me whatever information you feel
9 I should have.

10 Q If there's a question that I ask you
11 that you don't know the answer to, please state you
12 don't know the answer. We ask you not to make any
13 assumptions or to draw any conclusions but simply
14 to state from what you know from your own personal
15 knowledge, what you saw, what you heard, and your
16 own personal involvement in any of the activities
17 that we'll be talking about today.

18 If I ask you any questions that you don't
19 understand, please ask me to restate it and I'll be
20 very happy to do that.

21 Have you, prior to today, reviewed any of the
22 anticipated questions and answers from today with
23 any of the attorneys seated at the table today?

24 A Anticipated questions?

25 Q Yes. A Just anticipated

1 subject matter.

2 Q And who did you do that with?

3 A Mr. Tom Germine.

4 Q And can you state when you had that
5 opportunity to review these proceedings with him?

6 A Review the proceedings? We discussed the
7 Diamondhead situation on several occasions, the last
8 being Friday.

9 Q And did you discuss with him what you
10 felt would be relevant testimony regarding the
11 incidents in this lawsuit or were you concerned
12 with the day to day status at the Diamondhead plant?

13 A I don't think relevant testimony, just what
14 I observed.

15 Q Are you presently involved at the
16 Diamondhead plant now? A I've been
17 involved at the Diamondhead plant, at the facility,
18 since about 1976 in the continuing and still ongoing
19 action which was generated out of our Spill Preven-
20 tion Control and Countermeasure regulation 40-C.F.R.-
21 112.

22 Q Are you employed by the Environmental
23 Protection Agency? A Yes, I am.

24 Q And can you tell us how long you've
25 been employed by this agency?

1 A I've been employed by the U.S.E.P.A. and its
2 predecessor agencies since 1966.

3 Q And what is your present capacity
4 within the E.P.A.? A I now work with
5 the Emergency Response Branch.

6 Q Do you have an official title?

7 A No. I don't have an official title.

8 MR. MARTIN: Counsel, I would,
9 with your permission, like to make
10 a statement for the record so that
11 there will be no possible misunder-
12 standing later.

13 MR. SHUR: Certainly.

14 MR. MARTIN: It was my
15 pleasure to meet Mr. Polito on Friday.
16 That's the first time I ever met him.
17 I didn't think I'd be meeting him
18 until today.

19 The meeting arose out of a
20 letter or notice that had been sent
21 by the E.P.A. to Newtown Refining
22 Corporation which I represent. The
23 letter was received by certified mail
24 on Friday, October 19, in Frackville,
25 Pennsylvania, at the company's office.

1 Most of the top executives were away
2 but a Mr. John Brown who was more or
3 less in charge there called me to read
4 the letter to me. My secretary took
5 it down. I advised Mr. Brown to call
6 Mr. Rubel, R-U-B-E-L, who was the
7 author of the letter on Friday because
8 the letter demanded a response by
9 Friday, October 19, and obviously,
10 there was little or no time to prepare
11 any kind of a response.

12 The letter referred to an
13 incident of October 1, 1979, but the
14 letter did not disclose what the
15 incident was. No one at Newtown Refining
16 Corporation, to this moment, knows what
17 that incident was other than some slight
18 conversation. The E.P.A. representatives
19 and I believe Mr. Polito was the gentle-
20 man who was on the telephone with Mr.
21 Brown, denied Mr. Brown's request for a
22 delay, stating that some response had
23 to be made.

24 Mr. Brown called me back. I
25 suggested in view of the attitude of

the E.P.A. that a meeting be scheduled as soon as possible to show the good faith and interest of Newtown Refining Corporation. There are no executives at the property because it's leased but Newtown has always wished and has had many other cases where it has had to be in compliance with government regulations and that is it's attitude. Despite the offer of a meeting, there was still an insistence that a response be made that day, October 19. The end result was the scheduling -- Oh, then there were, I won't say threats but warnings, whatever you want to call them, that unless Newtown did something at the property on Friday, October 19, that the E.P.A. itself would hire a contractor to arrive at the property and to do certain work directed by Mr. Polito and to charge Newtown the cost.

In view of the attitude, Newtown felt it had no choice but to go ahead and arrange for a contractor to be at the property. It was agreed to meet Mr.

Polito at four o'clock Friday afternoon at the property. I was there as Counsel for Newtown, Mr. Jack Kroop, a professional engineer, was there for Newtown to ascertain exactly what system Mr. Polito wanted to put in. I'm sorry if I'm taking too much time but I think it's an important incident to relate.

MR. SHUR: Yes.

MR. MARTIN: Mr. Polito was there and another gentleman whose name was John. Mr. Polito, can you tell us his last name?

THE WITNESS: Berger, not from E.P.A., from a contractor to E.P.A., ecology and environment.

MR. MARTIN: Okay, he was there, Mr. Robert Mahler, who is the president of the company that leases the property and is operating an oil canning operation there, not a re-refining but an oil canning operation and there were two representatives from Coastal Services, Incorporated, who are contractors who are familiar with the kind of work that

1 the E.P.A. wished to have done.

2 Mr. Polito had a sketch of
3 the kind of system that might be
4 effective to contain -- There's
5 a run-off situation. There is a
6 certain amount of oil from past
7 operations on the property and in
8 periods of heavy rain, a slick is
9 alleged to have been seen.

10 Apparently, no one has measured that.
11 However, that seems to be the basis
12 of the desire of the E.P.A. to have
13 some work done there.

14 Mr. Kroop looked at Mr. Polito's
15 sketch, Mr. Kroop and Mr. Polito and
16 John Berger discussed the sketch at
17 length with Coastal Services'
18 representatives and it was agreed that
19 an oil filter system would be put in
20 on Saturday morning, October 20.

21 My understanding from a tele-
22 phone conversation is that a trench
23 was dug, certain piping and a certain
24 filter system, some oil-absorbant
25 material was put in, and that this is

compliance with what the E.P.A. wished on Friday, October 19, and apparently prior to that time.

I've had a conversation prior to this deposition with Mr. Germaine who tells me that he knows something about the incident on Friday, October 19. I had asked Mr. Polito whether this was a separate complaint and a separate matter as far as the E.P.A. was concerned and he said that it was and in view of that, we proceeded. We talked only about the alleged incident of October 1 as to which we yet do not have information. We constructed the system, the system requested by the E.P.A., and it is my understanding that a meeting is being set up at this office sometime later this week, possibly Thursday, October 25, I'm not sure of that yet, but, however, representatives of Newtown are very interested in anything the E.P.A. is interested in in that property or any other place and will be here.

As far as Newtown is concerned, if this is and it has been told to us that it is a separate incident and that they wish certain things done, Newtown is quite willing to do it. If, on the other hand the incident has anything to do with the pending lawsuit, the New Jersey Department of Transportation against P.S.C. Resources, Newtown, and another company, Diamondhead Oil then Newtown wishes to enter all objections it can and reserve all rights it has as to any evidence that might ever be attempted to be introduced arising out of the incident of Friday, October 19.

I would hope that all Counsel would agree with me that the functions of the E.P.A. should not be interfered with and they should, the E.P.A., should be cooperated with by all companies and Newtown is willing to cooperate as it has said repeatedly everytime it has had a chance to talk with a representative. Newtown is also looking for a letter today which is promised by Mr.

Polito where he had received the permission of the New Jersey Department of Transportation to construct the oil filter system on D.O.T. property and also Newtown is looking for detailed information concerning the alleged incident of October 1, which has also been promised to us and I've told Mr. Polito that I will be willing to stay here at his office, you know, to suit his convenience today. As long as I'm here, I can get the information and send it back to Newtown so that Newtown representatives can be better prepared to discuss the situation with the E.P.A. on October 25 or whatever the day the meeting is set up.

MR. GERMINE: I would like to say something for the record on behalf of my client, the New Jersey Department of Transportation. We were also advised on Friday, October 19, of the plant emergency response of the Federal Environmental Protection Agency to this

1 spill incident. The Department of
2 Transportation has been aware of the
3 fact that oil was flowing, has been
4 flowing in the past off of the property
5 of Diamondhead Oil Refining Company
6 which is now operated by Newtown Refining
7 Corporation and this outflow of oil is,
8 in part, the basis of our present lawsuit
9 against the defendant, Newtown Refining
10 Corporation.

11 The Department of Transportation
12 agrees with Counsel's characterization
13 that insofar as this constitutes an en-
14 forcement of federal law, it is separate
15 and distinct from the basis for this
16 lawsuit but insofar as the underlying
17 incident is concerned, it is intimately
18 related to the concerned of the Depart-
19 ment of Transportation in this lawsuit
20 in that the Department of Transportation
21 is the adjoining property owner and
22 that the outflow of oil which was reported
23 by the federal Environmental Protection
24 Agency was intruding upon lands owned
25 by the plaintiff, Department of Trans-

1 portation.

2 The Department of Transportation
3 therefore, sees its own rights as
4 being intimately bound up in this
5 particular incident. We saw fit and
6 I in a personal capacity as Counsel
7 for the Department of Transportation,
8 instructed our field personnel to go
9 to the scene on Friday and insofar as
10 E.P.A. operations needed to involve
11 State property to cooperate in every
12 way possible in these operations.

13 As I understand it from Mr. Polite,
14 a barrier fence was constructed on
15 State property, property of the
16 Department of Transportation, and
17 this was done with my oral permission
18 insofar as there had been a reference
19 to a letter. I don't believe that
20 a letter was given but on behalf of
21 my client, I gave our oral permission
22 for these operations to take place
23 on State property.

24 I might add that I did not
25 feel that it was proper for myself

1 to go to the scene of the operation
2 insofar as I am connected with this
3 lawsuit which involves certain re-
4 lated matters. I did instruct our
5 assistant resident engineer to go to
6 the scene and to provide whatever
7 support and assistance was necessary.

8 Again, I reiterate that al-
9 though the federal enforcement activity
10 was obviously involved, federal law
11 with which we are not concerned in
12 this lawsuit except, incidentally,
13 as it relates to the necessity of
14 removing the oil lake in 1977, the
15 underlying conduct is intimately re-
16 lated to the violation of my client's
17 rights and that does form a basis of
18 part of our claim against the defendants.

19 MR. SHUR: Just a statement I
20 would like to make as Counsel for P.S.C.
21 Insofar as any of the evidence which
22 has been the subject of the two state-
23 ments that have just been made on the
24 record by Counsel for Newtown and Counsel
25 for the plaintiff may be used against

P.S.C. Resources in the context of this litigation. I would object to the same for the reasons that there has been no notice given to P.S.C. Resources of an investigation and for whatever other legal defenses Newtown and P.S.C. may have insofar as to the activities we're dealing with today, all rights are reserved.

(A discussion took place off the record.)

Q Mr. Polito, how long have you been with the E.P.A. and it's predecessor agencies?

A 1966.

Q And would you state for us for the record some of your background educational background.

A I received my Bachelor of Science degree in chemistry at Queens College in 1959 after a two-year hiatus in the United States Army which interrupted my college career. I then took employment or subsequent while studying at Colgate-Palmolive Company, functioning both as chemist and industrial engineer at that facility while also pursuing graduate study at New York University. After about two years of working at the Colgate-Palmolive Company,

I took a job as chemist with the United States Food and Drug Administration from about 1961 to 1966.

Subsequently, in 1966, I joined one of the predecessor agencies of the United States E.P.A. which was formed in 1972 and was chief chemist of the chemistry branch of these predecessor agencies which happened to be located right here in this facility at Edison, New Jersey. In 1969 to 1972, I was chief of chemical operations for the Lower Florida Estuary Study which is looking at all chemical incidents from Palm Beach down to Key West.

1972 to 1974 I was director of laboratories for Rochester Field facility and was charged with all chemical work dealing with the international field, the Great Lakes, dealing with chemical pollution of the Great Lakes from various inputs. From 1974 to the present time I've been with the Emergency Response Inspection Branch holding various functions with that branch and my present work since 1974 has been in responding to emergency situations throughout the States of New Jersey, New York, Puerto Rico, and the Virgin Islands. These emergency operations deal with hazards which present imminent threats to a life and property as well as lesser incidents dealing with environmental pollution.

1 Q Have you had any particular training
2 in the federal environmental statutes and the enforce-
3 ment regulations that have been implemented for these
4 statutes? A We periodically receive
5 training courses dealing with our specific work which
6 is the administration of Section 311; specifically
7 we receive non-scheduled but occasional training in
8 attending seminars and lectures on federal regulations.

9 Q Now, the emergency responses that you've
10 been referring to, are they limited to any particular
11 type of chemical response or how would you character-
12 ize that? A They're not limited to any
13 kind of chemical response, they're to any type of
14 environmental incident which generates interest by
15 the press. They range from a small spill from a
16 residential heating facility into potential states
17 of disaster.

18 Q Have you had much experience with oil
19 pollution in the past? A Since 1974,
20 I've been directly associated with the Field Response
21 Investigatory Administration of oil spill response.
22 Prior to that time, as chemist and as being responsible
23 for laboratory operations, I've also been associated
24 with oil spill incidents in slightly different
25 vantage points.

1 Q Now, in your capacity with this
2 particular unit since 1974, have you had the
3 opportunity to actually go out and visually inspect
4 the sites where the spills are alleged to have occurred
5 or are you more concerned with the chemical and
6 scientific analysis of samples that are brought back
7 to the facility here? A No, fortunately
8 my experience does span in the complete scope. I'm
9 involved with field response, chemical interpretation,
10 and legal proceedings.

11 Q Have you ever been involved in any other
12 legal proceedings other than the one we're dealing
13 with today that have involved oil pollution or similar
14 hazardous conditions? A Yes, I've been
15 involved with many, given testimony to some, many
16 enforcement conferences, informal hearings, adminis-
17 trative processes.

18 Q Can you give us just a brief list of
19 some of the companies that have been involved?

20 A I'll give you just three that come to mind
21 that I've been involved in actual pollution abatement
22 services. One was in Oswego, New York, in which I
23 presented testimony at the Federal Circuit Court in
24 Auburn, New York, in support of New York State in
25 federal hearings. I've been involved with the State

1 of New Jersey in the contamination of mercury in the
2 Hackensack Meadowlands and am still involved as
3 E.P.A. Coordinator for that action. I was involved
4 with giving testimony for an alleged -- For a
5 P.C.B. spill in Sayreville, New York, by the -- By
6 a person employed by the Goldleaf Transportation
7 Company. I've been involved in numerous S.P.C.C.
8 hearings, Spill Prevention Control and Countermeasure
9 hearings dealing with actions surrounding 40-C.F.R.-
10 112. I'm also operating under the full authority
11 of 40-C.F.R.-1510, the National Contingency Plan in
12 which I am, at specific incidence, on scene coordinat-
13 or responsible for directing federal emergency actions.

14 Q Have any of your past experiences and
15 testimony that you've given, have you ever been asked
16 to make a determination by any party as to whether
17 one particular incident gave rise to a cause of
18 action in violation of any federal statute?

19 A I'm not so sure I understand the question.

20 Q Have you been responsible for making
21 the determination based upon analyses of samples
22 that are the subject of these particular proceedings
23 with making the determination as to whether or not
24 the content or characteristics of the sample are, in
25 fact, in violation of any particular regulation or

statute? A Yes.

MR. GERMINE: I object to the form of the question in that it interjects the phrase "samples which are the subject matter in this litigation." I don't believe that reference is clear to me nor to the witness.

MR. SHUR: Well, I'm asking in -- asking in a general sense whether Mr. Polito is in a position to make a determination or is there someone else that makes that. That's what I'm getting at. I'm not referring to any particular sample, I'm referring as a general matter.

MR. GERMINE: You're referring to his duties as -- His general duties in what position he holds?

MR. SHUR: Right, right.

MR. GERMINE: Could you rephrase the question?

Q Do you understand the question, Mr. Polito? A The question is do I determine whether an oil spill has occurred and I do make that when an Oil spill has occurred.

Q Would you explain exactly how, whether

1 or not a particular federal statute has been violated
 2 by a particular spill, what are the steps that you
 3 undertake? A I would rather not talk
 4 about particular federal statutes. I would rather
 5 under 311 Section B-5 and B-6 and B-3, which says
 6 there shall be no oil issued into -- No oil or
 7 hazardous substance into or upon the navigable waters
 8 of the United States and adjoining shorelines..
 9 It is my then determination based on investigations
 10 which may be administrative or it may be on-site
 11 to determine whether, by the physical characteristics
 12 of oil, whether an oil is deposited in harmful
 13 quantities in the said areas.

14 Q And you take a physical sample of what
 15 you see and then you take an analysis of that?

16 A Not all the time.

17 Q When you say "small and not all the
 18 time," are you referring to my part of the question
 19 asking as to whether or not samples are taken or
 20 do you make just a visual determination and on

21 occasion -- A We -- I determine it is
 22 not necessary to take a sample based on the physical
 23 characteristics of the spill material. I can
 24 determine that oil has been spilled and on that basis,
 25 whether it's discharged in harmful quantities, take

1 actions under Section 311 of 92-500.

2 Q Do you recall when the first time you
3 had the opportunity to obtain any knowledge with
4 regard to the Diamondhead Oil Refining Facility
5 located in Kearny, New Jersey?

6 A Yes, it was approximately -- Approximately
7 in April to June of 1976.

8 Q And do you recall how you first became
9 aware of this particular facility?

10 A Yes, I was chief of the Emergency Response
11 Inspection Branch and people who were working for
12 me brought back stories of S.P.C.C. violations of
13 oil spills associated with that facility.

14 Q Would you explain to us what you mean
15 by "S.P.C.C. violations."

16 A Yes. Under 40-C.F.R.-112, a facility who
17 stores oil above ground in any single container of
18 660 gallons or an aggregate of 1,320 gallons above
19 ground aggregate storage or 42,000 gallons below
20 ground is required to have, upon demand, available
21 for review, a Spill Prevention Control and Counter-
22 measure plan. This Spill Prevention Control and
23 Countermeasure plan is a document which is devised
24 to control the spillage and leakage of oil insofar
25 as preventing that facility from spilling oil into

1 the United States. Not only is it a document, it
2 requires implementation. It requires construction
3 of devices and establishment of managerial procedures
4 and commitments.

5 Q And when you say you became aware of
6 an S.P.C.C. violation in April or June of 1976, are
7 you referring to the fact that you became aware that
8 the individuals in charge of the Diamondhead plant
9 did not have such a plan or were you advised of the
10 fact that there was, in fact, an unlawful discharge
11 at that time?

12 A No, we were -- The
13 actions, I believe, were initiated before I was
14 branch chief. I inherited an ongoing inquiry which
15 is more directed toward the preparation and implementa-
16 tion of Spill Prevention Control and Countermeasure
17 plan rather than an a priori determination that that
18 facility had a spill.

19 Q Are you familiar with an individual by
20 the name of Richard Spear?

21 A Yes, I am.

22 Q Can you tell us who he is at the present
23 time?

24 A Richard Spear is chief of the
25 Surveillance and Monitoring branch at Edison, New
Jersey.

Q Are you aware as to whether or not Mr.

1 Spear -- I should say Dr. Spear, was conducting an
2 investigation of the individuals in charge of the
3 Diamondhead plant prior to your taking over?

4 A To my knowledge, he was not conducting any
5 investigation of the individuals at Diamondhead.

6 Q But was he concerned with whether or
7 not there was an S.P.C.C. plan in effect?

8 A Yes, he was concerned that there was an
9 S.P.C.C. plan at that facility.

10 Q Did you have the opportunity to talk
11 with Dr. Spear concerning his knowledge of what was
12 going on at the plant prior to your assuming the
13 responsibility for the investigation?

14 A I had the opportunity to discuss it with Dr.
15 Spear but I don't think I did discuss it with Dr.
16 Spear.

17 Q Do you recall the first time you, your-
18 self, went down to the plant and made a visual
19 inspection? A Yes, I think it was about
20 -- About approximately June 25, 1976.

21 Q And prior to that, are you aware as to
22 whether any of your employees conducted any inspections
23 of the facility? A Yes, they were --
24 They were there in about -- In -- As I said, that
25 time period I related to you. I think our activities

1 did reach a, let's say, an intensity point around
2 June 15.

3 Q Could you explain to us what you mean

4 by "intensity point"? A Yes, in an
5 incident, we attempt to negotiate with the facility
6 to bring them in to compliance. It's a cooperative
7 type of action in which we would tell people they're
8 in violation and we visit them and we explain to
9 them what they have to do. We make them aware of
10 the regulations and then we try to bring them into
11 compliance with federal law.

12 Q Do you bring any written literature
13 with you when you conduct these visits, generally?

14 A On occasion.

15 Q And specifically, are you aware as to
16 who the individuals were that actually went down
17 when you first took over to make these explanations
18 to the people in charge of the plant?

19 MR. GERMINE: I object to
20 the form of the question. I don't think
21 there's been any testimony that represen-
22 tatives were sent down to make explana-
23 tions.

24 MR. SHUR: Alright, I'll withdraw my
25 question.

1 Q Mr. Polito, in the case of the
2 Diamondhead Oil Refining facility, are you aware as
3 to whether or not any individuals went down to this
4 particular plant to make any explanations as to their
5 interests concerning S.P.C.C. violations?

6 A Again, I'm a little confused with "explanations
7 to their interest." We normally don't, you know,
8 make visits to explain our interests. We make
9 compliance inspections. This may have been initiated
10 through a letter which asked certain questions.

11 Q Are you familiar with an individual
12 by the name of Clark Price?

13 A Yes, I know Mr. Price.

14 Q Who is he?

15 A He was an engineer at that time with the
16 Emergency Response Inspection branch.

17 Q Is he presently employed by the branch?

18 A No, he is not employed by the branch.

19 Q Do you know where he's employed?

20 A Yes, he's been transferred. He's now in the
21 Surveillance and Monitoring branch, Air Pollution
22 Group.

23 Q Where is that located?

24 A It's right here in Edison, New Jersey.

25 Q And are you familiar with an individual

1 by the name of Joseph Marishak?

2 A Yes, I am familiar with Joseph Marishak.

3 Q Would you tell us who he is?

4 A Mr. Marishak was a technician who was
5 associated with the Emergency Response Inspection
6 branch.

7 Q Now, were those two individuals, Mr.
8 Price and Mr. Marishak, under your supervision
9 during the time that you took over the Emergency
10 Spill Response unit? A They were

11 under my indirect supervision.

12 Q Did you, yourself, direct any of
13 these individuals to go to the Diamondhead Oil Re-
14 Refining plant to conduct an inspection or investiga-
15 tion? A I don't recall but let me say

16 that it would not have been unusual for me to speak
17 directly to them.

18 Q Now, as a general matter, when your
19 inspectors or investigators go to a plant, do they
20 prepare a memorandum or otherwise report to you
21 of what happened during their investigation?

22 A On occasion they may prepare a memorandum.

23 Q Is there a reason why they would or
24 would not? A They would if they are

25 a person who does a full job but sometimes it's not

1 done.

2 Q Do they verbally report to you if there

3 isn't a written memo? A Again, did

4 they verbally report to me? They might have, they

5 might not have. I don't recall.

6 MR. SHUR: May I have this

7 marked, please?

8 (A memorandum dated 7/2/76

9 was received and marked D-90 for

10 identification by the Reporter.)

11 (A discussion took place

12 off the record.)

13 MR. SHUR: For the record,

14 I have with me today a file contain-

15 ing a number of documents that have

16 been supplied to me by way of

17 discovery from Mr. Germiné and for

18 the record, I would like to state

19 that it has been represented that

20 these are documents taken from the

21 file maintained by Mr. Polito or

22 individuals who are associated with

23 Mr. Polito as they may be relevant

24 to this litigation.

25 MR. GERMINÉ: That's correct.

I MR. SHUR: Thank you, Mr.
2 Germiné.

3 Q Now, Mr. Polito, I show you what has
4 been marked D-90 for identification containing three
5 pages and I would ask you to look at it and identify
6 it for us if you can, please.

7 A D-90 is a letter by Clark Price written to
8 Henry Gluckstern, attorney, Water Enforcement branch,
9 dated July 2nd, 1976 related to the subject matter
10 of Diamondhead Oil Company.

11 Q And have you had a chance to see this
12 letter before? A Yes, I saw the letter
13 and initialed so on July 6, 1976.

14 MR. SHUR: Off the record.

15 (A discussion was taken
16 place off the record.)

17 Q Are you familiar personally with an
18 investigation on April 28, 1976, conducted by
19 representatives of E.P.A.?

20 A Would you repeat that, please.

21 MR. SHUR: Would you read
22 that back.

23 (The request that portion
24 was read back by the reporter.)

25 A Yes, I am familiar with an investigation.

1 Q How did you become familiar with that
2 particular investigation? A I became
3 familiar with that investigation and my recollection
4 is not crystal clear on this, either through direct
5 report from Mr. Price or through a memo, this date
6 a memo dated July 2nd, 1976.

7 Q Are you familiar personally with the
8 existence of lagoons which were allegedly located
9 on property maintained by the Diamondhead Oil Refining
10 Company at that time? A Yes, I have
11 personal knowledge of those.

12 Q Did you first become aware of these
13 lagoons by reading or becoming familiar with this
14 particular investigation on April 28, 1976, or did
15 you become aware of these lagoons at some other time?

16 A My awareness of the lagoons became deeply
17 imbedded in my mind when I personally visited the
18 facility.

19 Q And you said earlier that that was on
20 June 25, 1976. A Approximately June
21 25.

22 Q So, that would have been approximately
23 two months, roughly speaking, after this investiga-
24 tion by Mr. Marishak and Mr. Price?

25 A That would be the date that they became --

1 Their existence became deeply imbedded in my memory.

2 Q Can you state for us one way or the
3 other as to whether or not any investigation had
4 been conducted prior to April 28, 1976, insofar as
5 they related to the existence of lagoons on the
6 property?

7 MR. GERMINE: Are you asking
8 the witness to respond from his
9 personal recollection?

10 MR. SHUR: Yes, I am.

11 A Would you repeat the question.

12 MR. SHUR: Read it back for
13 me, please.

14 (The requested portion
15 was read back by the reporter.)

16 A To the best of my recollection, prior to
17 April, no.

18 MR. SHUR: For the record,
19 I would state that Mr. Polito has
20 been looking through what appears
21 to be a file that he has brought
22 with him today. I would ask that
23 Counsel for the record to state for
24 us whether or not there are additional
25 documents that are relevant by way of

Polito, direct

1 discovery or have they not been
2 provided to us because of some
3 objection or irrelevancy?

4 MR. GERMINE: I would say
5 that of the documents relating
6 to the basis of this lawsuit, every
7 relevant document in Mr. Polito's
8 file has been provided. There are
9 documents relating to recent E.P.A.
10 enforcement actions at Diamondhead
11 facility which have not been provided
12 and I would have no objection if
13 Counsel seeks them as long as it
14 does not interfere with the E.P.A.
15 enforcement policy.

16 MR. SHUR: Thank you.

17 MR. MARTIN: For the record,
18 Tom, when you say the documents have
19 been provided, "all the relevant
20 documents have been provided from Mr.
21 Polito's files," are those the docu-
22 ments that were sent to Paul Shur and
23 Charles Mandell with your letter of
24 July 20, 1979, a copy to me?

25 MR. GERMINE: Yes, and I might

1 add that as I note in this letter of
2 July 20, 1979, there are materials
3 which are present here today consist-
4 ing of photographs and aerial photo-
5 graphy which were not provided with
6 that letter but which Counsel now has
7 access.

8 MR. MARTIN: Thank you.

9 Q Mr. Polito, when you became aware
10 and concerned about the existence of these lagoons
11 that we've been referring to, can you tell us who
12 made the determination as to on whose property
13 the particular lagoons were located?

14 A Yes, Mr. Mahler who identified himself as
15 either owner or operator of the Diamondhead Oil
16 Company.

17 Q Was this Mr. Robert Mahler? Do you
18 recall his first name? A Yes, it was
19 Mr. Robert Mahler.

20 Q And he told you personally that these
21 were lagoons located on the property owned by the
22 Diamondhead plant or the corporate owners who
23 actually owned the property itself?

24 A Would you break that question into its
25 components parts?

1 Q Did Mr. Mahler himself state to you
2 that the lagoons were located on the property of the
3 plant?

4 A Mr. Mahler took direct action
5 concerning those lagoons and also explained to me
6 and to other investigators concerned with the actions
7 surrounding Diamondhead why he was using those
8 lagoons in the manner in which he was using them.

9 Q But do you know for a fact whether or
10 not the lagoons were located on Diamondhead property
11 or were they located on property owned by another
12 entity or individual? A I don't know
13 that for a fact.

14 MR. SHUR: Off the record.

15 (A discussion took place
16 off the record.)

17 Q Mr. Polito, I show you what has been
18 marked Exhibit-A to the Complaint filed by the
19 plaintiff and I show it to you and ask you whether
20 or not you can show us where the Diamondhead Oil
21 Refining Company property is located?

22 A Yes, the Diamondhead is -- No, I can't
23 show you where the Diamondhead Oil Company is
24 located.

25 MR. GERMINE: Could you ask
the witness whether he's familiar

1 with the map at all. I don't
2 think there's any basis for the
3 question unless he has some
4 familiarity with this particular
5 map.

6 MR. SHUR: Well, the witness
7 has stated to me that he was at the
8 plant and I'm asking him whether or
9 not by looking at this map he can
10 indicate for us where the plant was
11 located.

12 THE WITNESS: "The property
13 was located," you said.

14 MR. SHUR: Alright, the property.

15 MR. GERMINE: I might state
16 for the record that this is a map of
17 Right-of-way parcels prepared by the
18 Department of Transportation. I
19 don't think the witness could designate
20 property lines based on this map since
21 he had no part in it.

22 MR. SHUR: Alright, fine.

23 Q From looking at this map, Mr. Polito,
24 can you identify that for us where the plant itself
25 was located based upon your own observations at the

Polito, direct

37

1 plant when you were there?

2 A Yes, the facility is located within a
3 rectangular line demarcation which has numbers in
4 circles in the area R-134-B, R-134-A, and R-134-C.

5 MR. GERMINE: I would like to
6 clarify for the record that not all
7 parcels were labeled on this particular
8 map, only those which were to be
9 acquired by the Department of Transpor-
10 tation and that the parcel designated
11 on the map "Diamondhead Oil Refining,
12 Inc.," is not numbered, just to clarify
13 that.

14 MR. SHUR: Thank you, Mr.
15 Germine.

16 Q Mr. Polito, with reference to the
17 Harrison Turnpike, are you familiar with the
18 Harrison Turnpike located in Kearny, New Jersey?

19 A The road in front of Diamondhead we usually
20 refer to as Harrison Avenue if that be the same
21 road.

22 Q Can you, by looking at this map,
23 identify Harrison Avenue for us and if you can,
24 can you explain to us in relationship to Harrison
25 Avenue where the plant was located?

1 A The plant is located within ten feet of
2 Harrison Avenue, a road which appears on this map
3 to run east-west between Kearny and Jersey City, I
4 guess.

5 MR. SHUR: Can we stipulate
6 for the record, Counsel, that the
7 plant was located in a southerly
8 direction from Harrison Avenue?

9 MR. GERMINE: Yes, I'll
10 so stipulate.

11 Q Mr. Polito, can you, taking into
12 consideration this particular map show us on the map
13 where the lagoons were located that you've been
14 referring to?

15 MR. GERMINE: Objection.
16 The map is not a physical photo-
17 graph and I doubt whether the
18 witness could do anything more
19 than speculate based upon those
20 property lines that are drawn.

21 MR. SHUR: Well, the
22 witness can generally identify for
23 us whether or not the lagoons were
24 located in a southerly direction,
25 easterly direction, or relationship

1 to whatever landmarks we have.

2 MR. GERMINZ: I have no
3 objection to the witness answering
4 the question where on the facility
5 in terms of compass points the
6 lagoons were located but I do not
7 think that this map which shows no
8 physical features of land could
9 possibly be a basis for identifying
10 the location of the lagoons.

11 MR. MARTIN: Well, may I
12 suggest, Counsel, that there are
13 some very clear physical features
14 and that consists of tanks and
15 equipment which are also designated
16 on that map and if that map is
17 accurate in representing where the
18 tanks were, possibly that would
19 be a starting point for Mr. Polito.

20 MR. GERMINE: If Mr. Polito
21 can identify the location in terms
22 of the tanks, I notice that the
23 witness is consulting an aerial
24 photograph, so perhaps -- I believe
25 we have an aerial photograph that has

1 been identified as an exhibit
2 previously. It might be more
3 relevant and more direct to ques-
4 tion him in terms of an aerial
5 photograph rather than a property
6 map.

7 MR. SHUR: Well, if I'm not
8 mistaken, the aerial photograph that
9 you've been referring to, Mr. Germiné,
10 was taken in the middle to late sixties
11 and we are talking about Mr. Polito's
12 inspection in 1976.

13 MR. GERMINE: No, the aerial
14 photograph I'm referring to was
15 previously marked and is dated August,
16 1972, I believe, and it was marked as
17 one of Defendant's exhibits during
18 the depositions, if I'm not mistaken
19 of David Longstreet.

20 MR. SHUR: Off the record.

21 (A discussion took place off
22 the record.)

23 MR. SHUR: Would you read
24 back my question, please.

25 (The requested portion was

1 read back by the reporter.)

2 Q Mr. Polito, can you tell us how far

3 -- A Excuse me. I don't know the
4 results of the objection. How is that resolved?

5 MR. SHUR: Off the record.

6 (A discussion took place off
7 the record.)

8 MR. SHUR: Alright, I will
9 withdraw that question.

10 Q Mr. Polito, from your own recollection,
11 can you state for us how far south from Harrison
12 Avenue you first noticed these lagoons that you've
13 been referring to? A In the approximate
14 order of one hundred yards.

15 Q One hundred yards south of the roadway?

16 A In the approximate order.

17 Q How far would you say these lagoons
18 were from the tanks that were located on the property?
19 Can you pinpoint them? A There are

20 many tanks so the question is not really accurate.

21 Q Were the lagoons south of the tanks
22 or were they alongside of the tanks?

23 A South of some tanks, southeast of other
24 tanks.

25 MR. GERMINE: For the record,

1 I think it should be clarified that we've
2 been referring to lagoons. If the witness
3 can state how many lagoons --

4 MR. SHUR: Yes, I hope to get to
5 that, too. This can be off the record.

6 (A discussion took place off
7 the record.)

8 Q Now, are you familiar with the
9 conclusion that Mr. Price and Mr. Marishak drew from
10 their observations of the lagoons that we've been
11 referring to? A May I refer to the
12 document that you're referring to?

13 Q Yes, please do. Here's mine.

14 A Which is the conclusion that you're referring
15 to?

16 Q Well, the conclusion that's stated in
17 the memorandum. A Point to the

18 paragraph.

19 Q The paragraph on page 1.

20 THE WITNESS: Off the record.

21 (A discussion took place off
22 the record.)

23 MR. GERMINE: I would object
24 to the form of the question in that
25 there seems to be more than one

1 conclusion in that paragraph.

2 MR. SHUR: I framed my
3 question in terms of the conclusions.
4 I'm asking Mr. Polito whether or not
5 he's familiar with any of the con-
6 clusions drawn in that paragraph by
7 any of the individuals who prepared
8 this memorandum. If he's, in fact,
9 familiar with only one as opposed to
10 another, then I would ask him to
11 answer the question accordingly.

12 MR. GERMINE: Okay.

13 A There are several statements in the paragraph
14 that begins with the wording, "At the far rear of
15 the plant." Having knowledge of how these reports
16 are generated, we do not make investigatory reports,
17 we accept statements by plant personnel as to what
18 the conditions are that exist. If someone were to
19 say a sump is discharging, we would believe it until
20 we observed differently. This is not -- It's an
21 administrative type of review rather than any kind of
22 critical investigation.

23 Q Is it correct that there was more than
24 one lagoon that was the subject of the investigation?

25 A We were not investigating lagoons, we were

1 conducting an S.P.C.C. inspection but there were more
2 than one lagoon.

3 Q From this particular memorandum or
4 from any other knowledge that you obtained, were you
5 able to ascertain which particular lagoon was being
6 referred to here? A On the basis of

7 this memo?

8 Q Or from some other information.

9 A This memo I first saw on July 6. I had been
10 on the site on June 25. Now, even after being on
11 the site and making certain observations on site,
12 it would still be hard for me to know which one of
13 the lagoons he would be referring to when he would
14 say that one of the lagoons has a discharge pipe.
15 There were many lagoons and some of these pipes
16 were half buried, some were open, and I think that
17 statement is not the basis of a thorough investiga-
18 tion in that I feel there would probably be more,
19 subject to some inquiry, further inquiry.

20 Q When you went to the plant in June,
21 did you observe what has come to be called the oil
22 lake in this litigation? A Yes, I
23 did observe that oil lake.

24 Q Could you describe it for us?

25 A Yes, it was a body of liquid of dark color,

1 a dimension that might be approximated very crudely
2 as one city block wide and two or three city blocks
3 long.

4 Q Were you able to ascertain the depth?

5 A I did not ascertain the depth.

6 Q How far was the oil lake from any one
7 of the lagoons that you've been referring to?

8 Can you tell us? A Yes, I know it was
9 immediately at the foot of one lagoon.

10 Q Was there anything that separated the
11 lagoon from this particular oil lake?

12 A This particular lagoon that I am referring
13 to now I would describe as the head waters to that
14 oil lake.

15 Q Would you explain to us what you mean
16 by that. A Oil was discharged from a

17 pipe that seemed to extend outside through an earthen
18 wall inside the lagoon and oil was pouring from this
19 oil lake out and forming what I would call a head
20 water. If we were in the natural environment, I
21 would refer to that lagoon as a spring and that lake
22 being spring-fed.

23 Q And you actually saw this?

24 A Yes, I did.

25 Q Do you know the date? Do you recall

1 the date that you saw this?

2 A Yes, I believe that I have a report on that
3 in which I reflect my observations.

4 Q Alright, we'll get to that later.
5 What did you actually see running from the lagoon
6 into the oil lake? Were you able to ascertain that?

7 A Yes.

8 Q What was that?

9 A I saw oil.

10 Q Now, you say that the pipe was under-
11 neath the oil lake or was it running out and then
12 dropping into the lake? A I said the
13 pipe extended from outside the earthen wall into
14 what appeared to be inside the lagoon. Oil was
15 coming out of this orifice, falling on the ground
16 and then forming what I would call the head water
17 up to that lake.

18 Q So, you actually saw it running along
19 the ground into the oil lake?

20 A I saw it flowing out of the pipe onto the
21 ground, running along the ground, and then into it.

22 Q Can you describe for us how this
23 liquid appeared? A Yes, it appeared

24 dark-colored; it had all the physical properties-

25 what I would associate the physical characteristics

1 of oil, lusterous, slippery characteristics of it.

2 Q Now, this particular lagoon that you've
3 just been describing to us, can you describe for us
4 how big it was? A Of approximate

5 dimension, fifteen to twenty feet in diameter.

6 Q Did you have a chance to observe
7 the liquid that was contained in the lagoon itself?

8 A Yes, I did.

9 Q And was it of similar characteristics
10 of what was running into the ground?

11 A Very similar characteristics.

12 Q Was it as dark or darker? How would
13 you describe it? A My recollection

14 is it would be exactly identical.

15 Q How much of an expanse of ground
16 separated the lagoon as far as where this fluid
17 ran into the oil lake? A As I

18 described previously, this lagoon seemed to
19 constitute the head waters to the oil lake and as
20 such, it started right where the pipe discharged onto
21 the ground.

22 Q Okay, but how much ground was there
23 between the pipe and the oil lake? Is that depicted
24 in this photograph that you are looking at?

25 A One foot was my recollection and that would be

1 a generous separation.

2 Q Now, you say there was a pipe running
3 from the lagoon into this particular area. Is that
4 correct? The area that you've been referring to as
5 the "head waters"? A Oh, yes.

6 Q Was there a pipe that ran into the
7 lagoon from another place?

8 A Yes.

9 Q And can you describe that pipe for us
10 as to where it was and --

11 A It was a similar type pipe. There seemed to
12 be pipes going all over the place, going underground
13 and poking up at other places. It would be impossible
14 for me to walk on the facility and tell you where
15 they come from or where they went.

16 Q Well, this particular pipe, are you then
17 saying that on the other side it was not connected
18 to anything in particular, it was just lying on the
19 ground? A The outflow side?

20 Q Yes. A It extended from
21 the -- Through an earthen dike. It appeared to be
22 inside the lagoon and maybe six inches off the
23 ground and the water leaving the pipe orifice onto
24 the ground and forming this -- What I've described
25 as head water to the lake.

1 Q Alright, you've produced for us some
2 photographs today. Is that correct?

3 A I have photographs mounted on a board which
4 we prepared back in 1976.

5 Q Did you, yourself, take these
6 photographs? A No, I did not.

7 Q Were any of the photographs that you've
8 produced for us today taken while you, yourself
9 were in that particular area?

10 A No, they were not.

11 MR. SHUR: Off the record.

12 (A discussion took place
13 off the record.)

14 MR. GERMINE: I might say
15 that the date -- I believe the
16 date of the taking of the photographs
17 is reflected in one of the memorandums
18 or one or more of the memorandums that
19 have been supplied and I believe that
20 the photographs are initialed and some
21 of them are dated.

22 Q Let me ask you this. Do you know who
23 the individual is who took the photographs themselves?

24 A Yes, I do.

25 Q Could you tell us who that is?

1 A Mr. Joseph Marishak.

2 Q And he's an employee of yours or works
3 with you? A He was at that time.

4 Q Is he still located at the facility
5 here in Edison? A He's stationed in
6 Puerto Rico.

7 Q Is that a temporary assignment or
8 do you expect him to be back?

9 A Mr. Marishak is an employee hired under the
10 Federal Emergency Management Authority and as such,
11 a permanent employee as I think you're referring to.

12 MR. SHUR: Off the record.

13 (A discussion took place
14 off the record.)

15 MR. SHUR: Let's take a
16 five-minute break.

17 (A recess was taken.)

18 MR. SHUR: For the record,
19 I would like to state that should
20 the plaintiff decide to produce Mr.
21 Marishak for his testimony at the
22 trial, I would reserve the right to
23 take his deposition and I would
24 assume that Newtown would join in
25 that reservation in light of what

testimony we've just received from
Mr. Polito as far as Mr. Marishak's
present assignment and future
involvement with the E.P.A.

MR. GERMINE: I can state
in all likelihood Mr. Marishak
will be called as a witness and,
as I understand it, he is stationed
in Puerto Rico and it will be
necessary for us to bring him here
at the time of trial. I don't
know about before that time when
there would be an opportunity to
depose him in this area unless
defendants wish to bear the
expense of flying him in but we
don't plan to bring him until trial.
My communication with Mr. Marishak
has been over the telephone up to
this point.

MR. SHUR: Well, I would
think that at some point in time
prior to the trial, if the State
intends to use his testimony, we
have the right to take his deposition

1 to determine what his testimony will
2 be and to take whatever steps are
3 necessary based upon that testimony
4 in order to properly prepare our
5 defense.

6 I'm not expressing any
7 intent at this time to bear the
8 expense of flying in Mr. Marishak
9 for the purposes of the deposition
10 but at some time I would think that
11 the State would have the obligation
12 to make him available for our taking
13 his testimony sometime prior to
14 trial and without having the opportunity
15 to take his deposition, I would think
16 that we would have the right to make
17 an objection to his giving testimony
18 at the trial.

19 MR. GERMINE: Well, when we speak
20 of the opportunity to take his deposition,
21 Mr. Marishak is not an employee of the
22 State of New Jersey, he's an employee of
23 the federal government. We cannot
24 control his whereabouts insofar as we
25 obtained knowledge of his whereabouts

1 and if he does prior to trial come
2 to this country or rather back to
3 the States for any reason, I'm sure
4 Mr. Polito will immediately notify
5 me of that fact and I will immediately
6 notify Counsel for the defendants.

7 If, prior to trial, if there
8 is an opportunity and if he arrives
9 for trial and if there is time prior
10 to trial for depositions, we will
11 cooperate in every way to make him
12 available; beyond that, we cannot
13 physically bring him from Puerto Rico
14 to the United States.

15 MR. MARTIN: On behalf of
16 defendant Newtown, we would request
17 Counsel for the plaintiff to provide
18 us with the address of Mr. Marishak
19 where we can communicate with him
20 unless Counsel chooses to do that
21 directly himself so that we can
22 ascertain what his travel plans are
23 and when he would be in the States
24 proper in any event and at that
25 time, we would wish to take his

Polite, direct

1 deposition if it appears indicated
2 at that time.

3 MR. GERMINE: Well, I would
4 object to Counsel for defendants
5 communicating with my witness with-
6 out my being present or privy to
7 such a conversation but I will
8 endeavor to contact Mr. Marishak and
9 determine what his travel plans are
10 as you have stated.

11 I might offer as a suggestion
12 that perhaps some depositions based
13 upon written questions -- I believe
14 that's provided for in the rules if
15 I'm not mistaken.

16 MR. SHUR: Yes, you're correct.

17 MR. GERMINE: Perhaps that could
18 be arranged.

19 MR. MARTIN: I don't think this
20 particular case -- I think with the
21 visual observations and the rather
22 confusing series of changes that have
23 taken place in this property over the
24 years that it would be preferable to
25 take his deposition in person and that

1 written interrogatories really
2 wouldn't serve the purpose and this
3 is compounded by the fact that if
4 you do intend to use him at trial,
5 then I think we would like to see
6 the witness if it is at a time
7 humanly possible at that time.

8 MR. GERMINE: I would like
9 to clarify something. Counsel don't
10 mean to imply that they would object
11 to Mr. Marishak's testimony if the
12 State does not physically transport
13 him from Puerto Rico to the United
14 States, do they?

15 MR. SHUR: No, I think you're
16 right, Mr. Germin. That's not
17 necessarily the State's obligation
18 but I think the State has an obliga-
19 tion or a limited obligation to make
20 the witness available within the
21 powers that the State has.

22 MR. GERMINE: And we will do
23 that.

24 MR. SHUR: Okay.

25 MR. MARTIN: I might add that

for the record, Counsel for the plaintiff has shown the utmost cooperation in the past in producing witnesses.

MR. GERMINE: Thank you.

I hope to do so in the future.

Q Turning back, Mr. Polito, to D-90 for identification which we've been discussing previously, rather than reading again from the paragraph that I referred to earlier, are you familiar with any conclusions or observations drawn by Mr. Price, Mr. Marishak or by yourself when you went yourself to the plant as to alternative or other sources for oil in the lagoon that you've been referring to earlier?

A I have no personal knowledge of any other source of oil.

Q Are you familiar with the basis from which Mr. Price made the statement in his memorandum, D-90, that the oil in the lagoon was apparently from a number of sources or what he meant by that?

A No, I do not.

MR. MARTIN: May I interject with one question, Counsel, with your indulgence?

1 MR. SHUR: Of course.

2 MR. MARTIN: Was any investiga-
3 tion made by the E.P.A., to your
4 knowledge, concerning such other
5 sources that are referred to in D-90?

6 THE WITNESS: No, they
7 were not.

8 Q At the time that you, yourself, made
9 your investigation, Mr. Polito, in 1976, and made
10 your observations, was the State in the process at
11 that time of constructing a highway in that vicinity?

12 A In the process? What do you mean "in the
13 process?"

14 Q Well, was construction under way?
15 Was highway construction under way?

16 A Highway construction had stopped across the
17 street and if that's what you mean, that was
18 clearly visible.

19 Q Alright, how far from where you
20 thought the plant to be was this particular highway
21 construction in terms of distance?

22 A The highway ended approximately within one
23 hundred yards -- One hundred yards.

24 Q Did you notice in particular any
25 mounds or piles of dirt or other material placed in

1 this particular area during the course of the
2 highway construction? A I don't know
3 what you mean by "particular mounds" and I don't
4 know what you mean by "placed."

5 Q Did you ever see any mounds of dirt
6 in the area of the Diamondhead plant?

7 A Oh, yes.

8 Q Do you know where they came from?

9 A Yes, I do.

10 Q Can you state for us where that was?

11 A Yes, when we began our investigation which
12 was centered around, again, Spill Prevention Control,
13 we had, during this period of time, received reports
14 of oil flowing across Harrison Avenue. I was told
15 that those mounds of dirt were placed by the New
16 Jersey D.O.T. to control that flow of oil across
17 Harrison Avenue.

18 Q When you say "control the flow of
19 oil," are you saying that the mounds were placed
20 there to keep the oil from flowing onto Harrison

21 Avenue or what? A There was a building
22 at that time located adjacent to the Diamondhead
23 facility and the oil had somehow worked its way
24 recently through that facility in some way.

25 Q Do you know where the oil came from

1 that you've been referring to?

2 A From the oil lake.

3 Q And did you actually see this oil run
4 onto Harrison Avenue? A I don't
5 remember at that particular spot.

6 Q Was this all on the same day, June
7 25, that you referred to earlier that you made your
8 inspections? A During that time
9 period reflected in the reports of various people
10 involved with the spill response.

11 Q Did you have the opportunity at any
12 time to observe the flow of ground water or run-off
13 during rainstorms while you were in the vicinity
14 of the Diamondhead plant? A From
15 where?

16 Q Anywhere generally where the rainfall
17 would run to in that area.

18 A Anytime I was there up until what date,
19 today or then?

20 Q Then, 1976.

21 A 1976?

22 Q Yes. A Yes, the major
23 route of flow -- You could look at the picture of
24 the plant and you could see it used to be running
25 towards the back of the plant, the whole plant is

1 pitched so it ran from the Diamondhead facility to
2 generally a northeasterly direction. The major
3 flow which we were concerned with was a particular
4 channel from the easternmost portion of the lake
5 that overflowed a -- Flowed to a storm sewer which
6 went underneath Harrison Avenue and across the road
7 into a marshland.

8 Q How far would you say was this eastern-
9 most portion of the lake from the Diamondhead plant?

10 A From the Diamondhead plant?

11 Q Yes. A Again, it was
12 within one hundred yards. It's closer than the
13 cutoff of the highway so it was in that area. Now,
14 my recollection of distances and my ability to judge
15 distances are not very good.

16 MR. MARTIN: Off the record.

17 (A discussion took place off
18 the record.)

19 Q Are you familiar as referred to on
20 page 2 of D-90 for identification of an inspection
21 conducted by Mr. Marishak on June 14, 1976?

22 A Yes, I don't know particularly why Mr.
23 Marishak was in the area, whether he was specifically
24 there on Diamondhead or some associated business
25 which led him along Harrison Avenue, but he brought

1 back this report of oil coming from a large oil lake
2 which flowed beneath Harrison Avenue by way of
3 sewer pipe into a marsh area across the street.

4 Q Is it correct that you determined that
5 this marsh area across the street constituted navigable
6 waters as defined by the federal statutes?

7 A Let's say I was involved in that determination,
8 yes.

9 Q Did you make a similar determination
10 as to the area to the south of Harrison Avenue?
11 That is the side of Harrison Avenue where the
12 Diamondhead plant was located.

13 A Yes, what I found was a hydrological chain
14 which we were discussing the oil and there seemed to
15 be various inputs from Diamondhead to this lake but
16 they seemed to originate on its westernmost border
17 at the Diamondhead facility and extended in an
18 easterly direction with an outflow to this channel
19 underneath the road and then into the marshland
20 across the street.

21 Q Alright, are you saying that the
22 property on which the Diamondhead property was
23 located and its immediate environs on the south
24 side of Harrison Avenue was also navigable waters as
25 defined by the statute? I don't understand your

1 answer. A Yes.

2 Q Okay. A And the reason
3 is the law reads navigable waters of the United
4 States and tributaries thereto. So long as there
5 was a hydrological chain and continuity of liquid,
6 they would constitute the navigable waters of the
7 United States.

8 Q Now, you said that you observed or
9 made a conclusion that there was a flow from the
10 western side of the Diamondhead property to the --

11 A Not the western side. I said the westernmost
12 portion of the lake, you know, south of the
13 Diamondhead property. There seemed to be an
14 elevated land to the west which I looked to find oil
15 and I found no oil. The oil started at about the
16 location of the lagoon which we discussed previously
17 where the pipe was coming out of. That was just
18 generally the easternmost-westernmost border of the
19 lake extended southerly and it went southerly and
20 took a sharp dogleg to the west and continued in a
21 westerly direction. It went to the general area on
22 the maps where it worked its way to Harrison Avenue.
23 There were indications of buildings which we
24 discussed, mounds where buildings had been previously
25 which the oil had worked --

1 Q And this was -- I'm sorry, go ahead.
2 I don't mean to cut you off.

3 A It had disappeared in time. I don't know when
4 or where or how it happened during the whole
5 construction.

6 Q Alright, this was a conclusion that
7 you made in approximately June of 1976?

8 A Yes, sir.

9 Q You say that you determined that there
10 was no oil going west from the westerlymost portion
11 of the oil lake?

12 MR. GERMINE: Objection.

13 I think that's incorrect. That
14 is not what the witness stated.

15 MR. SHUR: Well, I'm asking
16 him because I'm trying to find out
17 exactly what he was saying. I will
18 withdraw the question and ask it
19 this way.

20 Q What conclusion did you make as to the
21 existence of oil on property located west of the most
22 westerly section of the oil lake?

23 A From the land that I visited, it was elevated
24 to the west. Diamondhead -- We had to get -- I
25 remember climbing over a mound to get westerly and the

1 oil lake originated -- Seemed to originate in this
2 general area of the lagoon, proceeded in a south --
3 Southerly direction, made a dogleg to the west, headed
4 north, and under Harrison Avenue.

5 Q Did you make any conclusion at that
6 time as to how the oil lake itself had been formed?

7 A No, sir.

8 Q Did you have the opportunity to conduct
9 any borings or any other tests of Diamondhead property
10 or any property located to the west of the Diamondhead
11 property? A No, sir.

12 Q Alright, what you're saying then is that
13 your conclusions were drawn from your visual
14 inspection as to where oil was located?

15 A I have to keep coming back to the fact that
16 the actions that I was involved with at that time
17 were not directed against Diamondhead, they were
18 directed against keeping that oil from the navigable
19 waters of the United States and as long as there
20 was a hydrological chain, my actions were remedial
21 in nature to reach that oil and stop it from reaching
22 navigable waters of the United States and cleaning up
23 those oils which had reached the navigable waters of
24 the United States.

25 Q How many times were you actually at the

1 plant if you can recall? A '76, I don't
2 recall.

3 Q But you say up until the present date
4 you have had a continuing interest in the events at
5 that area. A Yes, up until today and
6 continuing until tomorrow thereafter.

7 Q From June of 1976 until September of
8 1977, can you state for us, if possible, how many
9 times you were at the plant?

10 A No, sir, I can't.

11 Q Would you say that it was more than
12 five or less than five?

13 A Five would be a good number.

14 Q Now, generally, do you recall whether
15 or not any one of these particular visits was
16 prompted by a particular incident or was it in the
17 ordinary course of a continuing investigation?

18 A The visit on June 25 or on and around that
19 date was prompted and I don't recall whether I had
20 been there before, in response to a oil spill in
21 violation of 311-B-3.

22 Q Do you recall where this oil spill
23 was located? A Yes, I do.

24 Q Can you tell us, please?

25 A Yes, it was located on a channel which led

1 from the westerly portion of this oil lake which
2 went into a catch basin underneath the road into
3 the navigable waters of the United States or
4 tributaries thereto.

5 Q Is this the same channel you referred
6 to earlier in testimony? A Yes, it is.

7 Q And were there any other oil spills
8 that prompted you to make an investigation of the
9 Diamondhead property or any of the activities that
10 were occurring there? A At that time?

11 Q At that time. A No.

12 Q 1976 I am talking about.

13 A No, not at that time.

14 Q Since that time, have there been any
15 particular spills that have caused you to conduct
16 an investigation? A Yes, sir.

17 Q Can you tell us exactly the date if
18 you can recall when that next incident occurred?

19 A Yes, sir. On October 1, of this year, Mr.
20 Fred Rubel who is now chief of the Emergency Response
21 branch or prior to October 1 received a request from
22 our enforcement division to our review of Diamondhead
23 Refining Company in this continuing S.P.C.C.
24 investigation in an attempt to bring the facility into
25 compliance. At that date, on July 18, I visited the

1 Diamondhead plant and for the purposes of -- Excuse
2 me, on July 18, 1979, I, in response to a request of
3 Fred Rubel, I visited the Diamondhead Oil and
4 Refining Company in Kearny, New Jersey, for determin-
5 ing compliance with the provisions of 40-C.F.R.-112.
6 This was a joint inspection with Mr. Nat Cooperman
7 of the New Jersey Department of Environmental
8 Protection, Division of Water Resources.

9 MR. MARTIN: May I interrupt,
10 Mr. Polito? Are you reading from
11 a document?

12 THE WITNESS: Yes. I'm
13 going to give Mr. Shur this document.

14 MR. MARTIN: Could you
15 identify it, please?

16 THE WITNESS: It's a memo
17 from me to Mr. Fred Rubel dated
18 August 16, 1976.

19 MR. SHUR: May I have this
20 marked, please?

21 (The report referred to
22 above was received and marked
23 D-91 for identification by the
24 reporter.)

25 Q Mr. Polito, are you familiar with an

1 investigation and report prepared for June 14, 1976.
2 from your own personal recollection?

3 A I believe the reference is too vague for me
4 to answer either yes or no.

5 Q I show you what's been marked D-91
6 for identification and ask if you can identify the
7 document, please? A Yes, this is an

8 Oil and Hazardous Substance Telephone Pollution
9 Report. It's signed by me with my signature and a
10 report at four p.m.

11 Q On what date?

12 A On 6/15/76. It was given about leachate out-
13 side the Diamondhead Oil Company.

14 Q What do you mean at the time that you
15 prepared the memo as far as "outside the Diamondhead
16 property"?

A In the vicinity of the
17 Diamondhead plant, of what we call leachate.

18 Q Can you briefly describe what you mean
19 by "leachate." A Leachate is a very

20 vague term meaning that everything we can't really
21 qualify except for something that is leaching; we
22 very loosely use the word.

23 Q And what did you learn at the time
24 you prepared this report as to what was leaching
25 from the property or outside the property?

1 A It was reported that it was oil.

2 Q And was a determination made as to
3 what the source of that oil was at the time you
4 prepared this report?

5 A My recollection
6 --

7 MR. GERMINE: For the
8 purposes of clarification, has the
9 witness testified that he, in fact,
10 prepared this?

11 THE WITNESS: Yes.

12 Q Go ahead. A Would you
13 repeat the question.

14 MR. SHUR: Would you be
15 kind enough to read it back.

16 (The requested portion
17 was read back by the reporter.)

18 A I'm not clear if I reached any conclusion at
19 that time.

20 Q Now, going back to your testimony
21 earlier about your visual observations of this pipe
22 that you have described as being located in a lagoon
23 and discharging what you would observe to be oily
24 substances, was this on your June 25, 1976 inspection?

25 A I believe so.

Q Did you make an analysis, a chemical

1 analysis of what you saw at that time?

2 A Yes, there were two analyses performed, one
3 of which was run by personnel of the Diamondhead
4 Oil and Refining Company in which they told us this
5 material contained a certain quantity of oil and
6 then a subsequent sample was taken upon my request
7 by personnel who were then under my supervision and
8 brought to the Edison laboratory and a chemical
9 analysis was made.

10 Q Were both these analyses made at the
11 same time? A No, they were not.

12 Q Do you know when the analyses made
13 by the Diamondhead people were made?

14 A Yes, almost immediately.

15 Q In other words, they actually physically
16 took a sample at that time?

17 A They took a sample with E.P.A. people being
18 there.

19 Q Did you see that being done yourself?

20 A I don't recollect.

21 Q Did you actually see the report itself
22 that was prepared by the Diamondhead people?

23 A The Diamondhead people verbally told us.
24 I don't know that they prepared a written report.

25 Q Do you know approximately when they

1 advised you of the results of that analysis?

2 A Yes, within a few minutes after us having
3 the oil sample.

4 Q A few minutes after?

5 A Yes, during discussion of the material is my
6 recollection.

7 Q Did they explain or give any indication
8 to you as to what type of test was used to make the
9 conclusion that approximately ten percent was oil?

10 A I think that's not a proper question for this
11 reason: They knew their product on their facility
12 and they knew that they were dealing with oil or
13 they were dealing with some other substance and, in
14 fact, they knew they were dealing with oil so they
15 knew it was oil. The test that they ran was not to
16 qualitatively prove it was oil but somehow quantitate
17 the amount of oil in this particular mixture.

18 Q Can you tell us who explained to you
19 how and what was concluded from this particular test?

20 A I believe two people were present that time
21 and I would have to refer to all the documents I
22 have but two names do come foremost in my mind: a Mr.
23 Bob Mahler and a Mr. Shinkata.

24 Q And they verbally reported to you
25 the results of their test?

1 A Either one or the other or another person
2 under their direction, yes, sir.

3 Q And what action did you take, if any,
4 based upon this report that they made to you?

5 A I took actions before they made this report
6 to me.

7 Q Okay, and what were those actions?

8 A In investigating the spill of oil which I
9 had no knowledge was coming from Diamondhead. It
10 was coming from the lake and we were making a
11 reconnaissance of the area, walking along the westerly
12 side of Diamondhead and I noticed this oil discharging
13 from the lagoons which became obvious to me was going
14 to the oil lake in its contributing form, the head
15 waters to this oil lake.

16 Q Now, you say the lagoon was on the
17 westerly side of the Diamondhead property?

18 A No, while I was walking on the westerly side.

19 Q Okay. A The lagoon was
20 to the south and possibly a little to the west.

21 When I say "west," maybe ten feet, maybe directly
22 back, maybe not west at all. Okay? I saw the oil.

23 I went to the office and I said to the people, I would
24 like to speak to the person in charge." I believe Mr.
25 Mahler, at that time, identified himself as the person

1 in charge and told him that I had observed a discharge
2 of oil to the oil lake.

3 Q Did Mr. Mahler offer any explanation to
4 you? A Mr. Mahler first denied that such

5 a valve was opened.

6 Q Did you show him the particular valve
7 that you were referring to?

8 A Mr. Mahler was difficult and gave me no
9 response. At that point, being the on-scene
10 coordinator and being in power to enforce the laws
11 of the United States, I said, "Either I speak to the
12 person responsible for the facility or shut that
13 valve off or someone will go to jail." At that point,
14 I did achieve a response. Mr. Mahler and his
15 associate went back and shut the valve off.

16 Q Did they explain to you what the valve
17 was used for or give any explanation of what it was?

18 A Yes, they did.

19 Q What did they tell you?

20 A They told me that they were using that lagoon
21 to separate oil and water and they told me that they
22 were instructed to do that by the State of New Jersey,
23 a person from the State of New Jersey.

24 Q Did they tell you who?

25 A Yes, they did say Mr. Faillie gave them

1 permission.

2 MR. MARTIN: F-A-I-L-L-E.

3 Q How many lagoons were there in that
4 vicinity? A I don't remember. I think
5 I stated that before.

6 Q Were there more than five, more than
7 ten? A Again, I seem to hit on certain
8 numbers. Let's say about five.

9 Q Were they all in close proximity to
10 one another? A Yes, they were.

11 Q And again, I may have asked you this
12 earlier but was any determination made specifically
13 as to on whose property the lagoons were located?

14 A I think I went over by the actions of Mr.
15 Mahler, I was given every indication that that was
16 Diamondhead property.

17 Q Did you notice whether or not any of
18 the other locations that you observed had pipes
19 similar to the one that you've been describing?

20 A No.

21 Q You didn't make that observation or
22 there weren't -- A I didn't make the
23 observation. It's not improbable that those pipes
24 did exist.

25 Q But you didn't actually make the

1 determination? A No, there were pipes
2 in and out of the whole area.

3 Q Were they metal pipes? How were they
4 constructed? A I don't recall, sir.

5 Q How about the one pipe in particular
6 that you observed? Was that a metal pipe?

7 A It appeared to my remembrance a metal pipe
8 with a valve on the end.

9 Q Did you ever meet with Mr. McCone of
10 the New Jersey Department of Environmental Protection?

11 A Oh, I know Mr. McCone.

12 Q Did you ever meet him in the context
13 of your investigation of the Diamondhead plant?

14 A Let me say this: Most probably I made inquiry
15 into Mr. Mahler's assertion that the State of New
16 Jersey gave him permission to discharge oil out of
17 this valve and whether I met with him personally or
18 talked with him on the telephone or talked with Mr.
19 Faille on the telephone but I do remember talking to
20 everyone about that.

21 Q Did you ever discuss with him instructions
22 that may or may not have been given by Mr. McCone as
23 to constructing a lagoon on the property to house
24 rainwater or other run-off liquids on the property?

25 MR. GERMINE: Objection. The

1 witness has testified that the subject
2 of the discussion was discharges from
3 the lagoon. I think it's misleading
4 as far as suggesting that there was
5 a discussion of construction.

6 MR. SHUR: Well, I don't
7 think the witness limited himself
8 to the subject of discussions. He
9 did say one of the subjects of the
10 discussion was what you've been
11 referring to, Mr. Germiné, but I
12 think the question is not misleading.

13 MR. GERMINÉ: Well, I can
14 see the discussion of whether or not
15 to construct the lagoon. I have no
16 objection to that but the way the
17 question was posed, I believe it's
18 something he never said.

19 MR. SHUR: I'm asking the
20 witness whether or not he ever had a
21 discussion with Mr McCone as to how
22 or whether or not to construct a
23 lagoon on the property for the purposes
24 of collecting any liquid materials on
25 the property.

1 MR. GERMINE: I have no
2 objection to that.

3 A You rephrased it to the future tense, "to
4 construct". We didn't discuss anything to construct.
5 Certain things had been constructed on the property.
6 We did not discuss the construction.

7 Q Alright, did you notice any other oily
8 liquids coming off the Diamondhead property at any
9 other time other than this one particular incident?

10 A Oh, yes, sir.

11 Q And can you tell us when that occurred?

12 A It is still occurring, sir.

13 Q How about in the context of 1976?

14 Did you go back in 1976 after your inspection on
15 June 25 and make any observations of oil coming from
16 the property? A Coming from the
17 property?

18 Q Yes. A It would be
19 difficult for me to say because the construction of
20 the highway 280 proceeded. At some time since then,
21 I don't recall the dates, don't know the dates, I
22 never really made -- After that time, visited them
23 and we turned the action over to our enforcement
24 people and that was then in the process and I don't
25 know that I then went out and continuously --

1 Q Well, Mr. Polito, what did you do
2 along with the enforcement people as far as keeping
3 up with the incidents that you've been referring

4 to? A We turn our reports to our legal
5 section and then as field investigators, that ceases
6 our action and then we are supportive of our legal
7 section.

8 Q In other words, you were knowledgeable
9 as to what activities were undertaken by the enforce-
10 ment branch? A No, I'm not, not all

11 of them.
12 Q Some of them? A If I
13 saw a letter or knew of a conversation they had, I
14 might.

15 Q Alright, what did you, yourself, do
16 after you observed the pipe in the lagoon that you've
17 been referring to and spoke to Mr. Mahler? What
18 happened next? What did you do in response?

19 A Well, certain things were happening simultaneous-
20 ly.

21 Q What were they? A I
22 did investigate Mr. Mahler's assertion that he had
23 been told by Mr. Faille and I spoke to Mr. Faille's
24 supervisor, a Mr. John Vernon and he denied it that
25 such permission was granted and accordingly, I advised

1 Mr. Mahler by written memorandum dated July 2nd of
2 what I was told by the State of New Jersey and that
3 they told me that you've been ordered by the State
4 of New Jersey to cease this and any other discharge
5 onto the lands of New Jersey.

6 Q Did you write any letters to the
7 Diamondhead plant to advise them of that determination?

8 A Yes, I did.

9 Q And did you make any determination as
10 to the responsibility of the owner of the property
11 on which the oil lake itself was located?

12 A Yes, sir.

13 Q And do you know who the owner of that
14 property was? A I was told it was the
15 State of New Jersey.

16 Q Do you know who told you that?

17 A I believe it was common knowledge.

18 Q And what actions did you take in that
19 vain? A I took actions against stopping

20 the oil from leaving that property outside of any
21 other actions which our legal people might have taken
22 pursuant. I'm almost sure and I have not documented
23 this that I made phone calls to the State of New
24 Jersey advising them of their responsibilities and
25 since the oil was coming off their land, I personally

1 held them immediately accountable according to a
2 standard operating procedure where I take action
3 against the oil. If the State of New Jersey had
4 third-party liability, they should take this up as
5 a matter after the fact. This is my common method
6 of operation.

7 Q Well, the discharges that you've been
8 describing coming from the State property --

9 MR. GERMINE: Objection.

10 There were no statements as to
11 discharges from the State property.

12 MR. SHUR: Well, I'll withdraw
13 the question. Would you read back
14 Mr. Polito's answer to my last question,
15 please?

16 (The requested portion was read
17 back by the reporter.)

18 Q Mr. Polito, as to the oil that you
19 described as coming off the State land, did you
20 coordinate any activities with the State of New
21 Jersey as far as ceasing that flow or did you assume
22 sole responsibility for causing the end of that
23 phenomena? A We made contact with both
24 New Jersey D.O.T. and New Jersey D.E.P.

25 Q And what was done in response to that?

1 A Certain things were done by the State of
2 D.O.T. in certain areas that were able to stop the
3 oil and I believe that they eventually rounded that
4 oil up..

5 Q Was anything else done in particular
6 that you know of other than this mounding process?

7 A Well, I cleaned the oil that had reached
8 the navigable waters of the United States under the
9 311-K fund of the 92-500.

10 Q That's the Spill Compensation Fund
11 that's provided for by the federal statutes?

12 A Yes, I believe the document is -- It's all
13 a pollution report and I -- A statement here which
14 was written by me as Attorney Gluckstern delivers
15 legal notice to New Jersey Secretary of State and
16 New Jersey Commissioner of D.O.T. pursuant to
17 40:C.F.R., Part 1510, Annex 8, Sections 1802 and
18 1803.

19 Now, it's our -- It's my political observa-
20 tion that governments, state and federal, are
21 prevented from immediate action in instances where
22 they have direct interest because of funding
23 requirements. Therefore, I have the most immediate
24 funding available and I institute action rather than
25 wait because we have an emergency.

1 MR. MARTIN: Excuse me,
2 Mr. Polito. You were reading from
3 a document. Could you identify
4 that for us, please?

5 THE WITNESS: Yes, this is
6 a pollution report written by me,
7 not signed here but June 24, 1976.
8 These are pol-reps that are
9 commonly issued to document a
10 pollution incident.

11 MR. MARTIN: June 24?

12 THE WITNESS: 1976.

13 Q Is that it, a copy of it?

14 A Yes.

15 (A discussion took place
16 off the record.)

17 MR. MARTIN: Can I interject
18 one question while you're looking
19 at that, Mr. Shur?

20 MR. SHUR: Please do.

21 MR. MARTIN: Mr. Shur asked you
22 if you had contacted the New Jersey
23 Department of Transportation and you
24 answered "Yes" concerning the oil that
25 you'd been talking about. Did you

1 contact the Town of Kearny?

2 THE WITNESS: No, sir.

3 MR. MARTIN: Are you aware
4 that the Town of Kearny owned land
5 contiguous to the New Jersey Depart-
6 ment of Transportation in the vicinity
7 of the oil lake?

8 THE WITNESS: No, sir.

9 MR. MARTIN: Not to this day
10 you're not aware?

11 THE WITNESS: No, sir.

12 MR. MARTIN: I'm talking about
13 1976.

14 THE WITNESS: No, I'm still
15 not.

16 MR. MARTIN: Okay, we'll
17 come to that.

18 MR. SHUR: Off the record.

19 (A discussion took place off
20 the record.)

21 Q Alright, back on the record. Now,
22 at the plant, Mr. Polito, did you have the opportunity
23 to make an inspection of the process that was being
24 conducted at the plant? A No, sir.
25 We had certain research reports that were done when

1 oil pollution started to hit the foremost and one of
2 the facilities that was identified in the report which
3 I can't give you because I don't remember it, did
4 discuss the re-refining process of Diamondhead.
5 That would be the only process investigation.

6 Q Alright, is it correct that earlier
7 you stated that a sample was taken by yourself of
8 the liquid that you observed in the lagoon and taken
9 to an E.P.A. laboratory? A No, sir,

10 I never said I took the sample myself. It was under
11 my --

12 Q Someone else did it?

13 A Yes.

14 Q Are you familiar with the results of
15 that particular sample? A Yes, I

16 am.

17 Q Can you tell us what the results were?

18 A That the oil that was being discharged from
19 that lagoon was, in fact, oil.

20 Q And what percentage of the fluid was
21 oil if you can state for us?

22 A I would have to look at the laboratory report.

23 Q And what action did you take at that
24 point after you learned the results of that particular
25 report? A I would have to look at the

1 chronology of documents to find out. If you have a
2 document that you're referring to to assist me,
3 I can look at it.

4 MR. SHUR: Let me have this
5 marked then, please.

6 (A memorandum dated 7/2/76
7 was received and marked D-92 for
8 identification by the reporter.)

9 (A discussion took place
10 off the record.)

11 (A recess was taken for
12 lunch.)

13 MR. SHUR: Alright, let's
14 go on the record. Would you read
15 back my last question and answer
16 before we broke, please?

17 (The requested portion
18 was read back by the reporter.)

19 (A discussion took place
20 off the record.)

21 Q Alright, Mr. Polito, I show you what
22 has been marked D-92 for identification and I ask
23 you to please identify that two page document if you
24 can, please. A It's a letter written by
25 Arthur Gevitz, Hazardous Substance Spill Response

1 Officer, written to me dated July 2, 1976.

2 Q Have you seen that particular letter
3 before? A Yes, I have.

4 Q And you received a copy of the letter
5 when it was written or shortly thereafter?

6 A Yes.

7 Q And by looking at that particular memo,
8 does it refresh your recollection as to the events
9 that occurred during your inspection on June 25, 1976?

10 A Yes.

11 Q Now, after having refreshed your
12 recollection by reading D-92, can you tell us what
13 actions you took subsequent to your taking or having
14 someone take an analysis of the liquid that you saw
15 emanating from the pipe that you've described earlier?

16 A On July 2, 1976, I directed a letter to Mr.
17 Robert Mahler of the Diamondhead Oil Refining Company
18 in which I advised him he may be in violation of
19 public law 92-500 and suggest he contact his attorney
20 and also an E.P.A. attorney to discuss the liability
21 aspects of the law.

22 Q Do you know what capacity Mr. Mahler
23 had at the plant? What was his function? Did he
24 explain that to you? A No, only by the
25 words when I asked who was in charge, he identified

1 himself as being in charge.

2 Q And did you, at that time -- Strike
3 that question.

4 Was that the first time that you had written
5 to someone at Diamondhead, this particular letter
6 of July 2, 1976, concerning violations of the federal
7 discharge statutes? A I believe it was
8 the first time that I put them on direct notification
9 of the possibility of violation of federal law.

10 Q Did you give him any advice as to a
11 method to alleviate the condition that you were
12 complaining of at that time?

13 A I believe people on my staff as indicated in
14 a letter dated August 2, 1976, written by Arthur
15 Gevitz to me in which he narrates -- Composes a
16 log of his action and reports how he subsequently
17 visited the site with a Mr. McCone and the actions
18 that Mr. McCone advised Mr. Mahler.

19 Q But as far as you personally, did you
20 make any suggestions or was it that your staff did
21 make any suggestions? A Except that

22 he should conform to all applicable federal N.P.D.E.S.
23 permit which is a separate process.

24 Q And you mentioned that N.P.D.E.S. permit
25 at the time of your letter to Mr. Mahler or was it at

1 that time that you were actually making your
2 inspection that you advised him of that?

3 A Again, my best recollection, I would have to
4 review my documents. I think there were two July
5 2nd memos and I think there might have been one other.

6 Q Again, this memo that you've referred
7 to, it's one that you received. Is that correct?

8 A On June 25, I recorded a conversation with
9 Mr. Mahler of the N.P.D.E.S. permit and he advised
10 me he had none. His statement was that his facility
11 was totally self-contained.

12 Q Are you reading from a memo?

13 A A memo I wrote to Richard Baker dated June
14 25, 1976.

15 Q Do you recall personally the substance
16 of that conversation with Mr. Mahler?

17 A Only as recorded to me by reading the memo.

18 Q Did you explain to him at that time if
19 you can recall the reason for your feeling that the
20 federal government should be involved or was involved
21 at that time in response to Mr. Mahler's statement
22 that the facility was self-contained?

23 A Well, yes, I didn't believe it -- that
24 statement because of my observations that it was not
25 self-contained.

1 Q And how did you or what did you use
2 to make your conclusion that the plant was not self-
3 contained?

4 A Well, as reflected as
5 Clark Price's memo and even my own observation up to
6 this day that it's a very old facility, the house-
7 keeping is very bad, and the management was extremely
8 poor; was poor and is poor.

9 MR. MARTIN: At this point,

10 I would like to enter a continuing
11 objection to a remark made by Mr.
12 Polito now on at least two occasions.
13 The first time prior to the lunch
14 break, Mr. Polito said something
15 like, "These things are still
16 occurring" and the remark that Mr.
17 Polito just made, I believe, is not
18 responsive to the question and the
19 facts which Counsel for the New Jersey
20 Department of Transportation will
21 readily stipulate to, I believe,
22 are that there is no re-refining
23 operation going on at the premises
24 now and has not been since May of
25 1978. There is no intake of waste
oils which was the former business

1 of the owners of this property. That
2 business has been totally eliminated
3 and there is no output of sludge which
4 has been discussed in earlier
5 depositions. It is a facility which
6 essentially is not operating except
7 for a canning operation of so-called
8 virgin oil and to have Mr. Polito's
9 say it is "still occurring." I think
10 we really have to ask him to make a
11 distinction from the operation that
12 was ongoing in 1976 and what he sees
13 now.

14 MR. GERMINE: I would like to
15 say that while we recognize and are
16 willing to stipulate that the re-
17 refining operation of Diamondhead
18 oil facility on 1401 Harrison Avenue
19 did cease on or about May of 1978, due
20 to the fact that the illegal discharges
21 from that facility were stopped by the
22 Department of Environmental Protection
23 and that facility could not continue
24 to operate without making such illegal
25 discharges and nonetheless, the presence

1 of accumulated quantities of oil that
2 were spilled and accumulated on the
3 facility grounds during the period
4 of time when the plant was in active
5 re-refining operation continue to
6 flow off of the property and into the
7 waters of the United States and into
8 the waters of the State of New Jersey
9 and in that regard, as Counsel for
10 D.O.T., I find the remarks of Mr.
11 Polito unobjectionable and altogether
12 relevant for this lawsuit.

13 MR. MARTIN: Well, the objection
14 will continue and also Counsel's remarks
15 that illegal discharges were stopped by
16 actions of the D.E.P., we will accept
17 Counsel's remarks that the operations
18 were stopped by actions of the D.E.P.
19 but we will not accept his remarks
20 that there were illegal discharges
21 because testimony of representatives
22 of various owners is directly to the
23 contrary and this is a matter that
24 will be resolved in a Court of law as
25 Counsel recognizes. The other part of

the continuing objection that there is a continuation of a flow is so at odds with the facts that I will have to underline the continuing objection again in that there are no re-refining operations at all and have not been since May of 1978 and we, as of this moment at this table, do not have any hard evidence, not even in memorandum, as to what is being complained of by the E.P.A. as of recent times. So, I respectfully say that we shouldn't even^{be} talking in terms of something that is allegedly ongoing when all at the table know the operation is totally different from the time when Mr. Shur is asking questions which is 1976.

MR. GERMINE: Well, I can only say that I would agree with Counsel's observations that these matters will be settled in due course in a Court of law. That the discharge of contaminated run-off is a problem

1 which is very much germane to this
2 lawsuit and it is one which the
3 Department of Transportation sees
4 as a continuing problem --

5 MR. MARTIN: Alright, if
6 we're talking about rainwater run-
7 off, fine. I just wish Mr. Polito
8 would make that as part of his
9 statement rather than and I may
10 apologize to him if I'm wrong, but
11 the implication seems to be that
12 it's the same kind of discharges
13 that he saw or he said he saw some
14 years ago. If we're talking about
15 rainwater run-off, beautiful. We
16 would appreciate the clarification.

17 MR. GERMINE: Well, Counsel
18 has the opportunity to seek such
19 clarification in regards to the
20 testimony.

21 MR. SHUR: Just one objection
22 as to Counsel's use of the term
23 "discharge."

24 Q Now, Mr. Polito, subsequent to your
25 investigation and making your conclusions based upon

1 your investigation on June 25, 1976, did you ever
2 formally advise any of the operators of the plant
3 that fines would be issued and if so, did you refer
4 them to particular federal regulations which formed
5 the basis for that information?

6 THE WITNESS: Off the record,
7 please.

8 (A discussion took place off
9 the record.)

10 A I don't advise people of penalties that would
11 be assessed. That's determined by our separate legal
12 process but what I do counsel them on is their
13 exposure to penalty and I think I did this in a
14 July 2 letter to Mr. Mahler which I would like to
15 quote from this letter, the last paragraph.

16 "I would suggest you contact your attorney
17 and discuss your legal responsibility with him.
18 Also, please feel free to contact E.P.A.'s attorney,
19 Mr. Henry Gluckstern, or Mr. Richard Fly for the
20 review of the penalty and liability aspects of the
21 law."

22 MR. SHUR: Perhaps we could
23 have the letter that you've been
24 reading from marked for identifica-
25 tion.

1 (The letter referred to
2 above dated 7/2/76 was received
3 and marked D-93 for identification
4 by the reporter.)

5 Q Mr. Polito, I show you what has been
6 marked D-93 for identification and I would ask you
7 to state whether or not this is the letter that you
8 have just read from into the record?

9 A Yes, sir, it is.

10 Q And, in fact, is this the letter that
11 you say you wrote to Mr. Mahler advising him of your
12 conclusions drawn from your May 25, 1976 visit?

13 A Yes, sir.

14 Q And is it correct that in your letter,
15 you refer to the ten percent oil-water mixture that
16 we discussed earlier in your testimony?

17 A Yes, sir.

18 Q Is this, in fact, the same conclusion
19 that was related to you by the Diamondhead people
20 based upon their investigation?

21 A This is the Diamondhead conclusion which
22 I accepted at that time.

23 Q Now, at the time that you had written
24 this letter, was anything in writing to show this
25 ten percent oil-water mixture conclusion that you

1 had seen? A I think on previous
2 testimony, that's the number they analyzed and that's
3 the number given --

4 Q Right, but the question was asked
5 at that time as to your actually being on the property
6 on June 25. A No, sir, the question was

7 with regard to the testimony of where did I get the
8 analysis. We'd have to go back and read that.

9 Q Alright, but from your own personal
10 recollection, after you left the plant until the time
11 you wrote this letter which is dated July 2, 1976,
12 had any new analyses been shown to you or any other
13 documentation to substantiate that ten percent oil-
14 water mixture? A I never received any
15 documentation.

16 Q Now, do you recall as to whether or
17 not at the time that you wrote this letter to Mr.
18 Mahler you had received the results of the E.P.A.
19 analysis? A Yes, sir. The laboratory

20 report on the E.P.A. analysis was dated August 3,
21 1976, and which was received in my office on August
22 4.

23 Q So, is it correct then that at the time
24 you wrote the letter, the report had not yet been
25 received? A That's correct.

1 Q Now, in your letter, do you indicate
2 that the waste line that you referred to was dis-
3 charging at the rate of three to five gallons per
4 minute? A I believe that paragraph is

5 in the letter, yes, sir.

6 Q And can you explain for us how that
7 determination was made? A That was

8 made on the basis of experience and visualization
9 on my part of what an imaginary container would fill
10 up and what rate.

11 Q Are you familiar with what action was
12 taken by the individuals at Diamondhead concerning
13 this pipe from the lagoon that you've been concerned
14 with? A Yes, as referred to earlier,
15 upon our urging, that pipe was shut off.

16 Q Do you know for a fact as to whether or
17 not that was ever used subsequent to that time?

18 A I have no direct knowledge.

19 Q Alright, did you ever have the occasion
20 to come back and personally inspect that particular
21 lagoon? A No. I don't remember.

22 Q Are you aware as to whether or not these
23 lagoons were ever covered over with dirt or sand at
24 some time subsequent to your analysis of them?

25 A No, sir.

1 Q Earlier we were attempting to determine
2 through maps and various other references exactly
3 where the lagoons were located to the best of your
4 recollection. Can you state for us for the record,
5 if you can, how far the furthest lagoon was located
6 from the Harrison Avenue roadway?

7 A I believe I stated within one hundred yards.

8 Q The furthest one?

9 A Yes. I have a big aerial map on the table
10 and this is quite similar to other aerial maps that
11 we looked at before which, at that time, they were
12 presented to me and my recollection to date does
13 present a fair representation of the distances between
14 the various facilities and structures.

15 MR. SHUR: Off the record.

16 (A discussion took place off
17 the record.)

18 Q Mr. Polito, I see you brought with you
19 today a photocopy of what appears to be a map of the
20 area we've been discussing. Is that correct?

21 A Yes, sir.

22 Q And on this particular map --

23 MR. GERMINE: I'll stipulate

24 -- Sorry to interrupt you but I'll

25 stipulate for the record that this is

1 a Xerox reproduction of Exhibit-A
2 or a portion thereof covering the
3 Diamondhead facility.

4 MR. SHUR: Thank you. We
5 also stipulate, perhaps for
6 expediency, that there is a
7 representation on there as to the
8 location of property on which the
9 Diamondhead Oil Refining Company
10 was operating?

11 MR. GERMINE: Yes.

12 MR. SHUR: And can we
13 stipulate perhaps also that the
14 boundary lines indicated on this
15 map are accurate to the best of our
16 own knowledge and information that
17 we've obtained in this case?

18 MR. GERMINE: Well, since
19 it is attached and annexed to the
20 Complaint, I would feel obliged to
21 so stipulate.

22 MR. SHUR: Alright, thank
23 you, Mr. Germin.

24 Q Mr. Polito, I point -- Strike that
25 question.

1 MR. SHUR: Why don't we have
2 this marked since it is a separate
3 exhibit.

4 MR. GERMINE: Alright, for
5 the record, I would like to add there
6 are certain markings on this map that
7 did not go with the original that I
8 assume Counsel will get into. The
9 basic map is a right-of-way parcel
10 map which is a reproduction of
11 Exhibit-A to the Complaint.

12 MR. SHUR: Off the record.

13 (A discussion took place off
14 the record.)

15 (The map referred to above
16 was received and marked D-94 for
17 identification by the Reporter.)

18 Q Mr. Polito, looking at what has been
19 marked D-94 for identification, can you draw in for
20 us the location of the lagoon that you've been
21 describing and which has been the subject of your
22 previous testimony, please?

23 A Yes, I'm going to mark it with a pen in my
24 hand in the approximate location of where the lagoons
25 that we were discussing that have that discharge oil

1 to what I've termed the head waters of the oil lake
2 and I've marked it in blue pen and put a little
3 X mark on that marking.

4 MR. SHUR: Now, I think
5 Counsel again will stipulate for
6 the record that the topmost
7 portion of the map points in a
8 northerly direction.

9 Q Can you tell us for the record which
10 side of the Diamondhead property the lagoon was
11 located? Was it on the northerly side, the westerly
12 side? A Southwesterly side.

13 Q And again, you stated earlier that
14 it was approximately one hundred yards from Harrison
15 Avenue. Is that correct?

16 A Very approximately.

17 Q One hundred yards?

18 A Yeah.

19 Q Now, can you draw for us the direction
20 in which you saw the pipe that you had a chance to
21 analyze on June 25, the direction the pipe itself
22 took? A Yes, it would have been almost
23 due west.

24 Q In other words, it pointed onto property
25 that was located to the west of the Diamondhead

1 property? A I don't understand that.

2 Q Alright, the direction that the pipe
3 took, was it in a direction to the west of the

4 Diamondhead property? A I don't under-
5 stand your question. The pipe pointed west to the
6 Diamondhead property, it didn't point west on other
7 people's property. I don't know where the property
8 line was. It was pointed approximately west.

9 Q Can you draw in for us the location
10 of some of the other lagoons that you've been
11 referring to?

12 MR. SHUR: Off the record.

13 (A discussion was held off
14 the record.)

15 A Yes, I'll draw that in again with my pen and
16 this will be the approximate location. I don't
17 know the exact number of the lagoons and this is
18 very approximate, just showing general area. I'm
19 going to draw in three other lagoons but there may
20 have been more and there may have been less.

21 Q So, am I correct in drawing the
22 conclusion from your testimony that part of the oil
23 lake was located in a westerly direction from the
24 pit that you've been referring to?

25 A Yes, yes, that's correct.

1 Q But you don't know at the present time
2 whose property the oil lake was located on. Is
3 that correct? A The oil lake?

4 Q Yes. A The oil lake was
5 located both -- It appeared to me on Diamondhead's
6 property and on the property of State of New Jersey.

7 Q Now, you're referring to the oil lake
8 at the place that you saw the pipe?

9 A I'm talking about the oil lake as it extended
10 and went south, took a dogleg to the east and then
11 continued to a larger area which I already described
12 as roughly one city block wide and three city blocks
13 long.

14 Q Can you, looking at this map, show
15 us how far going east from the lagoon that you've
16 marked the oil lake was located if you travel due
17 east according to this map?

18 A The oil lake -- You had to go on some high
19 ground in which they had the lagoons and various
20 operations and then the lagoons were on the other
21 side. See, I've drawn the dimension of these oil
22 lagoons too great. They wouldn't be that great.
23 I believe the oil lagoons were approximately fifteen
24 feet so we would have to take that context of scale.
25 I haven't drawn this to scale.

1 Q Alright, but you're saying on the
2 other side of the lagoons going east the oil lake
3 was located there, too?

4 A Yes. Again, I must refer to the diagram which
5 I have at my hand which more accurately represents
6 a fair representation.

7 Q Can you state for us how far the oil
8 lake was in distance from the easternmost lagoon on
9 the Diamondhead property?

10 A Not without referring to some of the photographs
11 I have to refresh my memory.

12 Q Are there photographs that you, yourself,
13 took? A No, they're not.

14 MR. SHUR: May I have this
15 marked, please.

16 (A group of eleven documents
17 was received and marked D-95 for
18 identification by the reporter.)

19 Q Mr. Polito, I've had eleven sheets that
20 are stapled together marked D-95 for identification.
21 Would you identify this if you can, please.

22 A Yes, the document labeled D-95 is a collection
23 of documents; the top document is labeled "Analysis
24 Request." The second page is a field data sheet and
25 the third page, they appear to be a gaschromatographic

1 (phonetic) and mass spectro-photometric diagrams.

2 Q Have you seen this analysis field
3 data sheet and attached graphs before?

4 A I believe I've seen them before, yes.

5 Q Can you identify what is being analyzed
6 in this report? A Sample number 37-172

7 which was collected during my visit of June 25, 1976.

8 Q And this is the same sample that one
9 of the E.P.A. employees took of the fluid that you
10 saw coming from the pipe that you have described
11 earlier? A Yes, sir.

12 Q And the sample has been identified
13 with a particular number. Is that the ordinary
14 procedure? A Yes, the number is given
15 on the field data sheet. It's a random number.

16 Q And what happens in the case of the
17 inspection? Does someone take a jar and place some
18 of the liquid in it and bring it back here or what
19 happens? A Yes, what was taken would
20 be what might be called a grab sample. The pipe was
21 opened up and a sample of this material was taken
22 with a jar, in a jar and brought back to the facility.

23 Q And does someone retain custody of that
24 sample or how is it maintained?

25 A Yes, it's transferred to the laboratory.

1 Q Do you know who the individual is who
2 actually prepared the analysis and ran the test?

3 A No, I do not.

4 MR. SHUR: Off the record.

5 (A discussion took place
6 off the record.)

7 Q Mr. Polito, referring you back to D-92
8 for identification which you have identified earlier,
9 I refer your attention to paragraph 3 and ask you
10 to explain for us the sample number that's referred
11 to in the memorandum. A Yes, this is
12 a letter written by Arthur Gevitz in which he reports
13 that a sample of black liquid was taken and turned
14 over to the E.P.A. lab in Edison, New Jersey. The
15 sample is 37-182.

16 Q Is that the same sample that you've
17 described for us as having been the subject of D-95
18 for identification? A Yes.

19 Q Can you explain to us why the sample
20 number is 37-172 in D-95 and 37-182 in D-92?

21 A I don't know if that's a -- To me, that is
22 reflected on a data sheet as 37-182. It could be
23 that it's either illegible or a mistake.

24 MR. GERMINE: As I understand
25 it, Counsel is questioning the sample

1 number on the analysis request as
2 appearing to be 37-172?

3 MR. SHUR: Well, I think
4 Mr. Polito had stated that when I
5 asked him --

6 MR. GERMINE: My copy appears
7 to be rather faint but it does show
8 an 8 which appears because of the
9 faintness of the Xerox reproduction
10 to be a 7.

11 Q But you're stating for the record that
12 this is, in fact, a report made of the sample that
13 was taken at the Diamondhead Refining Company.
14 Is that right? A Yes, but you asked
15 me at the beginning of the testimony that this is
16 personal knowledge. I don't have personal knowledge.
17 I have personal knowledge of procedure and procedurally
18 that would be it.

19 Q Now, reading this document in its
20 entirety, where does one come to a conclusion as to
21 what information one can get from this report?

22 A I draw my conclusions from the report of the
23 laboratory director, Francis Bersinski (phonetic)
24 which reports on 37-182 in which he reports -- Makes
25 the statement that the percent total hydrocarbon was

1 41 and the remaining percent was 59 percent water
2 and that the sample contained a heavy petroleum oil
3 with characteristic paraffin hydrocarbon.

4 Q And based upon this memorandum prepared
5 that you have just been reading from, you came to
6 the conclusion that what, in your own words?

7 A Well, I already based on my field observations
8 and discussions with operating personnel that this
9 was oil. This is just a confirmatory chemical
10 analysis.

11 Q Now, did any investigators subject to
12 your review or supervision conduct inspections
13 subsequent to the 25th of June, 1976?

14 A Yes, Mr. Gevitz who was appointed on-scene
15 coordinator for this site was, for this incident,
16 was on-site for a number of days. The exact number
17 of days I don't recall in which he supervised the
18 cleanup of the marshlands.

19 Q Now, was this cleanup related to the
20 pipe that you observed or was it a cleanup --

21 A This cleanup was related to the oil that was
22 spilled under Harrison Avenue.

23 Q So, this is another spill that we are
24 referring to, the spill that was coming from the
25 State property?

A Yes.

1 Q But in the course of that action, Mr.
2 Gevitz had the opportunity to go back to Diamondhead?

3 A He could have.

4 Q He could have, alright. Did he report
5 any such inspections to you that you can recall?

6 A Yes, I believe in this memo that you just
7 gave me a few moments ago that he talks about re-
8 turning to the site with Joseph Marishak.

9 Q On what date is that, Mr. Polito?

10 A I think it's July 2nd, August 2nd. The third
11 page in which he talks about referring to Joseph
12 Marishak and I'm sure being in the vicinity that he
13 might have -- Could not help but look at Diamondhead.

14 MR. MARTIN: August 2nd?

15 THE WITNESS: Yes, sir.

16 MR. SHUR: Mark that, please.

17 (A memo dated 8/2/76 was
18 received and marked D-96 for identifica-
19 tion by the reporter.)

20 Q I'm referring now to D-96 for
21 identification which I believe is the same document
22 that you've just been referring to, Mr. Polito. You
23 say that on August 2nd, Mr. Gevitz returned to the
24 Diamondhead facility? A No, I didn't

25 say that.

1 Q Would you repeat what you were saying
2 at that time for us, please.

3 A I referred to a report dated August 2nd and
4 in this report he makes reference to a return visit
5 by Mr. Marishak and it does not look as if immediately
6 we would have to read the report to find out the
7 date that he's referring to but I said it would not
8 seem improbable to me being on-site for maybe a week
9 or two that he did again visit Diamondhead.

10 Q Did you, after you wrote your July 2nd
11 letter to Mr. Mahler, did you write any other letters
12 or issue any other memorandums to anybody at
13 Diamondhead concerning activities at the plant?

14 A I don't believe so. I think once I referred
15 to our legal branch for resolution -- You know, once
16 the legal proceedings are under way, we're generally
17 not allowed to deal with the company directly.

18 Q In other words, subsequent to the
19 lawsuit filed by the Department of Transportation,
20 you would have forwarded --

21 A Oh, no, sir. The Department of Transportation
22 and the lawsuit is something entirely separate and
23 distinct from E.P.A. actions.

24 Q Alright, but when you say "subsequent
25 to legal proceedings," what legal proceedings are

1 you referring to? A I directed
2 inquiries about possible violations to Mr. Baker
3 concerning N.P.D.E.S. violations and also to Mr.
4 Gluckstern, both verbally and possibly there's a
5 written report here -- Yes, there is.

6 Q What is the date of that report?

7 A August 13, 1976.

8 Q So, you're saying subsequent to these
9 reports you forwarded any information directly to
10 the legal department rather than to the Diamondhead
11 plant itself? A Sir?

12 Q Subsequent to your memo of August 13
13 and subsequent to your correspondence with the
14 legal department, at that time, are you saying that
15 you had no other further written correspondence with
16 the Diamondhead facility people?

17 A Not to my recollection unless you can show
18 me something I might have written.

19 MR. SHUR: Off the record.

20 (A discussion took place
21 off the record.)

22 Q Did you or the department ever issue
23 any official citation or impose any penalty that
24 you're aware of?

25 MR. GERMINE: Objection. I

1 think the witness has testified that
2 it was not within his authority to
3 issue citations or impose penalties
4 but that was the function of a
5 different branch of the Environmental
6 Protection Agency.

7 MR. SHUR: I will withdraw
8 that part of the question in which
9 I asked that but I also did ask Mr.
10 Polito as to whether or not he has
11 knowledge of citations or penalties
12 being imposed and so I will restate
13 it that way.

14 A Yes.

15 Q Were, in fact, citations imposed?

16 A I'm looking at a document, N.P.D.E.S.-2-76-
17 102, Findings of Violations, Order to Show Cause
18 issued in the matter of Diamondhead Refining Company
19 by Meyer Scholnick dated November 24, 1976.

20 Q Are you personally familiar with the
21 facts that were made the subject of that Order to
22 Show Cause? A Not entirely, sir.

23 Q Did you participate in any of the
24 hearings that were held as a result of the Order to
25 Show Cause? A No, sir, not to my

1 recollection except as -- For instance, on August
2 13 '76, I sent information to the legal section and
3 if that constitutes involvement, then it would be,
4 yes.

5 Q But you didn't personally attend any
6 hearings conducted by any officials of the E.P.A.
7 resulting from that Order to Show Cause that you just
8 referred to? A Not to my recollection.

9 Q Did you supervise any of the cleanup
10 operations in the marshlands personally, Mr. Polito?

11 A No, not personally.

12 Q Did anybody ever report to you
13 subsequent to June 25, 1976, that a discharge was
14 being emitted from a pipe in a lagoon that ran into
15 the oil lake? A No.

16 Q Did any other employee of the Environ-
17 mental Protection Agency report to you of unlawful
18 discharges from the Diamondhead facility subsequent
19 to June 25, 1976? A In Mr. Price's
20 letter dated, I think, July 2, which I signed off
21 on July 6 which we discussed, he mentions -- He
22 makes observation -- Makes recollection of observa-
23 tions of the Diamondhead facility; whether these
24 were verbally transmitted to me, I don't recall.

25 Q You can't personally substantiate them

1 other than the fact that they're on a memo that you
2 reveived? A Yes.

3 Q I show you what has been marked
4 previously D-6 for identification and I ask you --
5 Well, first of all, I'll show it to Counsel. It's
6 going to go back awhile.

7 (A discussion took place
8 off the record.)

9 Q Mr. Polito, can you identify this
10 document for us, please? A Yes, this is
11 a document written by me, June 25, 1976 to Richard
12 Baker whose content I've mentioned previously in my
13 deposition.

14 Q Can we assume that that memo was
15 written subsequent to your inspection of the facility
16 on that particular date? A Yes, it was
17 since I reported on my observations of that day.

18 Q Lastly, I show you what has previously
19 been marked D-24 for identification and ask you if
20 you can identify it? A This is a letter
21 dated June 21, 1976, and written by Mr. Henry
22 Gluckstern, Attorney, Enforcement Division to Mr.
23 Frank Cahill, Supervisor, Loss and Commissions, New
24 Jersey Department of State.

25 Q Have you seen that letter prior to today?

1 A I frankly don't remember if I've seen this
2 letter but I think in my reports and Mr. Gevitz's
3 report we refer to such a notification.

4 Q Can you state to us whether or not
5 this is an official notification of a violation?

6 A No, sir, I'm not an attorney.

7 MR. SHUR: Okay, I have no
8 further questions.

9 CROSS EXAMINATION BY MR. MARTIN:

10 Q Mr. Polito, I just have a few questions
11 and then we'll get you out of here as fast as we
12 can.

13 I refer again to exhibit D-6, the memo from
14 you to Richard Baker of June 25, 1976, and ask that
15 you look at the last paragraph, in particular the
16 wording "Due to the sensitivity of cleanup actions."
17 What does that mean? Do you recall?

18 A What I meant by that is I was taking it as a
19 federal enforcement person outside of a legal action,
20 direct action against the State of New Jersey for
21 a spill and I interpreted this being a sensitive
22 action.

23 Q And you were, in fact, taking direct
24 action against the State of New Jersey?

25 A No, I don't take direct action. What I do is

1 report to our enforcement people of the actions I'm
2 taking. I took action against the oil. I cleaned up
3 the oil and was negotiating with the New Jersey
4 Department of Transportation and the New Jersey
5 Department of Environmental Protection to the extent
6 that they should take direct action to stop this oil
7 coming from property which was identified to me as
8 belonging to them.

9 Q In the third to last paragraph, you
10 refer to expending at least \$10,000 of federal
11 funds. A Yes, sir.

12 Q That's to clean up oil. Was E.P.A.
13 ever reimbursed for that money?

14 MR. GERMINE: Objection.

15 I don't think that would be in the
16 function of personal knowledge of
17 the witness. However, if he does
18 have personal knowledge, he's free
19 to answer the question.

20 Q Do you know whether that money was
21 ever funded to the E.P.A. or to any spill fund?

22 A I was going to comment exactly what Mr.
23 Germinie said. Those funds are recovered by the
24 United States Coast Guard. We don't normally have
25 direct knowledge of the states of those recoveries.

1 Q But did you have responsibility for
2 spending that \$10,000? A Yes, I did.

3 Q And how was that expended?

4 A It was expended in cleaning up the marshlands
5 which constituted the navigable waters of the United
6 States.

7 Q What were the items which you laid out
8 monies? A I don't have those documents

9 here. The federal Coast Guard would have a written
10 day by day account of those documents on a number
11 of people employed, equipment employed, gadgets and
12 gadgets employed.

13 Q Well, can you just give us an idea of
14 what kind -- Not that you have to put an exact
15 dollar amount on each item but what kind of equipment
16 was employed? A Well, it's absorbant
17 material, suction, vacuum trucks to suck up the oil,
18 disposal fees, absorbants, manpower, labor, maybe
19 certain expendable items like clothing, boots; that
20 could very well be possible.

21 Q The manpower, was that of the E.P.A.?

22 A No, that's manpower of -- Generally the
23 manpower of the contractor except if we go into
24 overtime, then those funds are charged against a
25 different account and it's very possible that there

1 was some E.P.A. costs associated with that charge.

2 Q And what company provided the manpower
3 in this case? A The contractor on the

4 job, I believe, is Coastal Services, the same Coastal
5 Services firm.

6 Q Did you authorize any of these monies
7 in the sense of obtaining a check to pay for any of
8 these monies. Did you obtain a check to pay for any
9 of this \$10,000? A Let me clarify

10 something. We don't issue a check, the Coast Guard
11 contracting officer deals directly with the
12 contractor in payment of funds. It's done according
13 to schedules and according to government contracting
14 procedures.

15 Q But does the person who wishes to be
16 paid need any kind of approval from you in this case?

17 A Yes, the on-scene coordinator, Mr. Gevitz,
18 who was on-scene, would testify to the -- He will
19 attest to the manpower on-scene and equipment,
20 et cetera and once those bills are approved, they're
21 sent to the Coast Guard contracting officer who
22 reviews them and then the Coast Guard will deal
23 directly with the contractor.

24 Q And when was the \$10,000 expended?

25 A I believe it was more than \$10,000. I think

1 the cleanup came to close to \$25,000, \$25,000 to
2 \$35,000.

3 Q When was that expended?

4 A Over that time period in June.

5 Q Well, let's see if we can clarify that
6 "that time period in June." Can you tell me
7 approximately what dates or how many days in June?

8 A On June 23, 1976, nine a.m., I received the
9 final determination on the orders of the United
10 States -- Well, whether those were orders of the
11 United States, these were legal points that had to
12 be clarified when we first noticed the oil spill
13 and the pollution fund was activated on that date
14 and I would say on June 23rd, then the contractor
15 was hired and cleanup began.

16 Q And when was it completed?

17 A I don't know.

18 Q Approximately how long did it take?

19 A Approximately it was completed --
20 Approximately in the early days of July.

21 Q You referred to a document whereon
22 June 23rd at nine a.m. you received word that you
23 could activate the pollution fund. Is that what
24 you said? A We referred before to

25 documents called Pollution Reports which is a log of

1 cleanup operations that we write.

2 Q What date is that?

3 A June 24, 1976.

4 MR. SHUR: Off the record.

5 (A discussion took place
6 off the record.)

7 Q Mr. Polito, in 1976, were you contacted
8 by anyone from the New Jersey Department of Trans-
9 portation concerning a project that became known as
10 The Oil Lake Removal Project?

11 A In June?

12 Q Anytime in 1976.

13 A Yes.

14 Q What was the nature of that contact?

15 A I attended a meeting with the Federal Highway
16 Administration and the New Jersey D.O.T., I believe,
17 at the -- We might have been primarily contacted
18 by the Federal Highway Administration and subsequently
19 we met at the D.O.T. offices. I believe what would
20 be on the extension of State Street in Trenton and
21 we were discussion removal of the oil and disposal
22 of the oil.

23 Q About when was that?

24 A In 1976 but it would be the second half of 1976.
25 The exact date I can't give you.

1 Q Now, in that meeting, can you just tell
2 us who the people were that were present at the
3 meeting? Who would the people be that were present?

4 A Well, a lot of people I don't know. I know
5 Mr. Carl Burns from the New Jersey D.E.P. was
6 present. I was present, Mr. Michael Debonas of the
7 Solid Waste Branch of E.P.A. was present.

8 Q Could you spell that?

9 A D-E-B-O-N-E-S, and representatives of the
10 State D.O.T., the contracting officer.

11 Q Who was there from the D.O.T.?

12 A I don't recall the names.

13 Q Was Jack Friedenrich there?

14 A I don't know. If I have a document that
15 reflects on that meeting --

16 Q Is it your custom to write a memo
17 after meetings of that type?

18 A No, it's not.

19 Q Because the D.O.T. does. Alright.

20 A You know all about that meeting.

21 Q Who from a contractor --

22 A I don't know that a contractor was there.

23 Q I thought that you said that a
24 contractor was there. A They had

25 contractors who were bidding on the oil removing job

1 for construction of highway 280 and made preliminary
2 presentations of what their plan to remove oil was.
3 It was in the New Jersey D.O.T. contracting process
4 and I don't know if they were there to discuss the
5 situation in general or there to judge the feasibility
6 of their presentation but it was just strictly a one
7 shot affair. My participation was just a one shot
8 affair.

9 Q Was Beatrice Tylutki there from the
10 Solid Waste Administration of the D.E.P.?

11 A I know who she is but I don't recall her
12 being there.

13 Q You do know who she is?

14 A Yes.

15 Q Were there any other meetings that you
16 attended concerning the oil lake removal project
17 in 1976? A No, I knew it was going

18 ahead and it was handled then by a Mr. Bolan of the
19 Hackensack Meadowlands Commission who was sort of the
20 coordinator with somebody from the D.O.T. and a
21 firm called Newtown Refining Corporation was given
22 the contract.

23 Q I would just like to correct your lines.
24 Do you mean subcontract?

25 A It could have been.

1 Q Do you know who the contractor was?

2 A No, I don't.

3 Q The D.O.T. contractor for that project,
4 you don't know? A No, I don't.

5 Q In 1977, did you have any meetings
6 on the oil lake removal project?

7 A It's very possible.

8 Q Do you recall any?

9 A I know during this whole period I conversed
10 with Mr. Bolan and he would send me carbon copies
11 which I don't see in our file.

12 Q Yes, I haven't seen too many of these
13 documents either and I know they must exist because
14 the E.P.A. was knowledgeable about this project
15 and the D.E.P. was. Could you maybe, if it's
16 in another file, could you search and provide Mr.
17 Germaine with copies of anything pertaining to the
18 oil lake removal project, anything from Mr. Bolan
19 or anybody else because it is noticeably absent
20 from your file here.

A I remember
21 receiving certain documents that I don't see in the
22 file here which surprises me. We weren't too
23 pertinent, I guess, because of my involvement.
24 Initially, I was given courtesy carbon copies but
25 really we had no general input. I remember meeting

1 with Mr. Bolan on the site and he was explaining to
2 me what was going to be done.

3 Q When did you meet Mr. Bolan on the site?

4 A I don't remember.

5 Q Was there any memo generated as a
6 result of that meeting?

7 A Not to my
8 knowledge.

9 Q Was that before or after the oil lake
10 was removed?

11 A During the oil lake
12 removal.

13 Q Approximately when was that?

14 A I don't remember when it was removed. It's
15 1977, I guess, to 1979 or before '79, I guess;
16 somewhere around '77, '78.

17 Q You agree it's removed now?

18 MR. GERMINE: Objection.

19 Q I would appreciate if you could
20 have someone look through your files about any
21 materials that you have concerning the oil lake
22 because we regard it as very pertinent to the
23 questions that we would like to ask you.

24 A This is the file that I have. There are many
25 branches throughout the E.P.A. that have files.
Our legal branch has files, our laboratory has files,
our permit branches have files, our solid waste branch

1 has files. If you need access to those files, they're
2 generally obtained through a general freedom request
3 to the Freedom of Information officer. I have no
4 way of getting at those files.

5 MR. MARTIN: Well, respectfully,
6 a subpoena has been served by defendant
7 P.S.C. Resources and that's why we're
8 here.

9 MR. GERMINE: Well, Mr. Polito
10 was subpoenaed with respect to all the
11 documents to which he had access and
12 control and I think he's just stated
13 that there are certain files of which
14 he has no control or access.

15 THE WITNESS: That's right.

16 MR. GERMINE: And those would
17 have to be obtained, since the federal
18 E.P.A. is not a party to this action,
19 I would have to request them and you,
20 Counsel for defendants, would have to
21 request them through the normal channels
22 of the Freedom of Information Act.

23 MR. MARTIN: Well, since we're
24 all trying to move this case with the
25 least expenditure to the government and

1 to the defendants, I take it that
2 you don't have any other documents?

3 MR. GERMINE: No, I don't.

4 MR. MARTIN: As of this
5 point, this is probably the first
6 you've heard about it yourself.

7 MR. GERMINE: Yes, as a matter
8 of fact, that's true. I've only had
9 exposure to what Mr. Polito has in his
10 own file; anything else that might
11 exist in the E.P.A. files I'm unaware
12 of.

13 MR. MARTIN: I hesitate to
14 go through the F.O.I.A. procedures
15 because I've gone through that with
16 another government agency many hundreds
17 of miles from here and it took a long
18 time. I always find that Counsel,
19 possibly E.P.A. Counsel could be of
20 assistance here. We could subpoena
21 everybody in the E.P.A. but that's
22 unnecessary.

23 MR. STONE: I think the best
24 way to do it is to do what you just
25 suggested, to make a request through

1 the Freedom of Information Officer
2 in the regional office. I think
3 that would be actually your best
4 bet.

5 MR. SHUR: Is there one person
6 that we would speak to who is the
7 Freedom of Information officer?

8 MR. STONE: I don't recall
9 his name.

10 THE WITNESS: James Marshall.

11 MR. STONE: Well, he's been
12 changed. The federal regulations
13 specify that request may be made of
14 Freedom of Information officer,
15 26 Federal Plaza, and you will receive
16 whatever answer you require within
17 whatever time it is required under
18 the regulations of Freedom of Information
19 Act.

20 THE WITNESS: I believe what
21 you're looking for, it should be found
22 with the Hackensack Meadowlands Develop-
23 ment Commission and probably, I think
24 you're not going to find it within the
25 E.P.A. except to waste a lot of your

1 time and possibly money.

2 MR. MARTIN: The time is more
3 important.

4 THE WITNESS: Yeah, I have
5 something here that was in our
6 file. It's the type of document I'm
7 talking about that to me it meant
8 very little when I got it and it
9 means very little now.

10 MR. GERMINE: I might mention
11 that that particular file was not
12 supplied because that was in our
13 files that were previously made
14 available to you.

15 MR. MARTIN: Okay.

16 Q Alright, let's go on, Mr. Polito.

17 What decisions were reached at your meeting with
18 Mr. Bolan concerning the oil lake removal contract?

19 A I make no decisions regarding contracts.

20 Q What decisions were made? Why were
21 you meeting with Mr. Bolan, just to be informed?

22 A Yes, we have many businesses with Mr. Bolan
23 in Hackensack, many environmental issues and either
24 I just stopped by for an update out of interest or
25 it might have been education to see how they were

1 controlling the removal of oil from the lake. It
2 might have been and I don't recollect, maybe
3 because I was being carbon copied I wanted to know
4 what I was being carbon copied for.

5 Q Did the Hackensack Meadowlands
6 Development Commission require any approvals from
7 E.P.A. in connection with the oil lake removal
8 project? A I'm not qualified to
9 answer that question..

10 Q Were you involved in any such
11 approvals? A No, in the preliminary
12 meeting that we had in Trenton with the D.O.T.,
13 my opinion was solicited but I don't know if my
14 approval -- That's not my responsibility or authority.

15 Q What opinion did you give?

16 A Well, they wanted to bring the oil to the
17 Kinbuck Landfill and I didn't think that was such
18 a good idea.

19 Q Where is that landfill?

20 A Edision, New Jersey.

21 Q Why didn't you think it was a good idea?

22 A Because litigation is underway with E.P.A.
23 with that for the same type of exposure.

24 Q What other things were discussed?

25 A I have very little recollection of anything

1 else.

2 Q Are you aware of what happened or
3 how the oil lake was removed?

4 A As I said, I met with Mr. Bolan and he
5 described a procedure where Newtown Refining siphoned
6 up the oil from the lake as it was herded over to
7 a particular area and each truck was numbered with
8 an invoice number and it was delivered, it was
9 certified received at the other end, and they had
10 a surveillance system of some kind to make sure they
11 would be beyond reproach in removing the oil.
12 It seemed like a good system the way he described
13 it to me but that's all I know.

14 Q Was the entire oil lake removed
15 as far as you know? A As far as I
16 know, I don't know.

17 Q Are you aware of any oil contaminated
18 soil from the base of the oil lake that might not
19 have been removed? A Soil has what they
20 call free space of voids in it in addition to the
21 soil particle absorbing soil. Based on my
22 experience with similar types of groundwater pollution,
23 the best you could possibly remove is 70 percent and
24 I guess that would be an upper number, in the order
25 of 70 percent. Refineries who have contaminated

1 groundoil can only remove about 70 percent where
2 the other 30 percent would be absorbed on the particles
3 of sand or held in the pure spaces between the oil,
4 not readily amenable to removal.

5 Q Is that what happened here?

6 A I don't know. I don't know if they removed
7 all the oil.

8 Q Did you ever see any contract documents
9 related to the oil lake removal project?

10 A No, I did not.

11 Q Did anyone every consult with you
12 concerning the contracts that were --

13 A No, they did not.

14 Q Did anyone ask you about a process
15 of storing 177,000 cubic yards of oil contaminated
16 material?

17 MR. GERMINE: Objection to
18 the form of the question.

19 MR. MARTIN: I think it's
20 fair for him to answer whether
21 anybody asked him or talked with
22 him about storing underground
23 177,000 cubic yards of oil contam-
24 inated material.

25 MR. GERMINE: Alright, if

1 you have any personal knowledge.

2 A Not to my recollection.

3 Q And did anyone ask you about burying
4 many thousands of cubic yards of oil-soaked material?

5 MR. GERMINE: Again, I have
6 to object to the form.

7 MR. MARTIN: Alright, I'll
8 make it exact, 177,000.

9 Q Did anyone ask you about burying oil
10 contaminated soils and residues from the oil lake
11 on Town of Kearny property immediately to the west
12 of the Diamondhead property?

13 A I showed you just a few questions ago a letter
14 dated November 29, 1977, which I have already
15 testified to that made very little sense to me.
16 Based upon your questioning, it's starting to make
17 more sense to me. It's starting to. It's talking
18 about things that didn't make any sense to me at the
19 time but now that you're starting to ask that, it
20 seems to make a little sense.

21 Q May I see the letter again.

22 A Sure.

23 MR. MARTIN: The letter of
24 November 29, 1977, that Mr. Polito
25 referred to, I would like to get

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this marked and get some copies.

MR. GERMINE: I object to having that marked in that the witness has stated for the record that he was so completely devoid of personal knowledge concerning this letter that it "made no sense to him." I see no relevancy or point in questioning the witness on the matters to which he has stated under numerous questions that he has no knowledge.

MR. MARTIN: The witness has produced a letter of November 29, 1977. It has his name on it as a carbon copy and the purpose of this deposition is to obtain information. It is discovery. Maybe at a trial, Mr. Germin, your objection would be heard and we would not be talking about late 1977 but at discovery. I think it's quite proper for us to find out what more this may lead us to so we know more about the case.

MR. GERMINE: Well, Counsel

has already directed a question to the witness about this letter in which he stated that it "made no sense to him." You also asked the witness of his knowledge of the materials found in the -- Disposal of the materials found in the lake and I think the witness indicated that he was not sure what had happened or if it had all been removed and I think it would serve no purpose for Counsel to be asking him questions about this letter. If you want to direct a specific question to the witness about his knowledge of the removal, that I have no objection to.

MR. MARTIN: I intend to ask that question and he can say he doesn't know but I would like to ask the questions about this letter first that has come from his files. I want this letter marked.

(The letter referred to above dated 11/29/77 was received and marked D-97 for identification by the Reporter.)

1 Q Mr. Polito, I direct your attention
2 to the first sentence of this letter from Mr. Cascino,
3 Chief Engineer of Hackensack Meadowlands Development
4 Commission to Theodore Fisher of the New Jersey
5 D.O.T. which states that "This office has reviewed
6 the emergency request of N.J.D.O.T. for the creation
7 of a second new on-site disposal area located on
8 Block 283, Lot 2, west of Diamondhead Oil for
9 additional quantities of contaminated materials from
10 I-280, Section 8-A and 8-D" and ask you if you know
11 that refers to? A No, I do not.

12 Q The language, "a second new on-site
13 disposal area," do you have any idea at all what
14 that is referring to? A No, I do not.

15 Q What is an on-site disposal area just
16 in general parlance? A I don't know
17 what they're referring to. This letter was in the
18 corners of this file and I never paid any attention
19 to it until you made inquiry.

20 Q When you received a copy of this letter,
21 your name does appear as a carbon copy?

22 A Yeah, that's my handwriting on the letter.

23 Q When you received this letter, did
24 you take any action? A It didn't mean
25 anything to me.

1 Q Even the first sentence?

2 A Nope, didn't mean anything to me.

3 Q I would like to get copies of that.

4 A Sure.

5 Q Now, I refer back to the land
6 immediately to the west of Diamondhead's property
7 and ask you if you know anything about the burial
8 of 177,000 cubic yards of oil contaminated material
9 there?

A To the west?

10 Q Immediately to the west.

11 A Do I know anything about it?

12 A Q Yes. A Your question is
13 phrased that I have direct knowledge of something
14 buried there. I don't know that anything is buried
15 there.

16 Q If you know nothing, you know nothing.
17 If you know something, I would appreciate it if you
18 would tell us. A I know nothing about
19 anything buried there.

20 Q And I believe you told us earlier that
21 you have never been furnished copies of contracts or
22 change orders from the New Jersey Department of
23 Transportation relating to the oil lake removal
24 project? A I would have no reason for
25 such knowledge.

1 Q And did anyone ever clear removal
2 procedures with you? A Clear? No,
3 I don't believe so.

4 Q Did anyone every get the approval of
5 the E.P.A. concerning the removal?

6 MR. GERMINE: Objection. I
7 don't think that the witness has the
8 knowledge to testify what anybody in
9 the E.P.A. did.

10 Q Do you know whether anyone in the
11 E.P.A. was ever consulted concerning approval of the
12 oil lake removal project? A No, I do
13 not know.

14 Q I forget. In 1976, when did you tell
15 us that you first visited the property?

16 A Around June 25, 1976.

17 Q At that time, did you have occasion to
18 examine the type of operations that were going on
19 there in the business operations?

20 A No, I did not.

21 Q Did you ever have occasion to find out
22 what kind of operations were going on there?

23 A Yes, I did have occasion to find out what
24 type of operations.

25 Q What kind of business was operating there

1 in 1976? A Well, that I don't know but
2 businesses at the facility were a re-refining company.
3 Now, whether they were operating as a re-refining
4 company in 1976, I would have no knowledge.

5 Q You have no idea whether they were
6 operating -- A I assume they were a
7 re-refining company. They may not have been.

8 Q Did you ask anyone what kind of
9 operations were being conducted?

10 A No, I did not ask anyone.

11 Q To your knowledge, does anyone else
12 at E.P.A. know what kind of operations were conducted
13 there?

14 MR. GERMINE: I object.
15 How can the witness testify to
16 what anybody else knows?

17 MR. MARTIN: To his know-
18 ledge, does he know if anybody
19 else at E.P.A. knows. If nobody
20 knows at E.P.A., fine, then we'll
21 just find that out.

22 MR. GERMINE: Alright,
23 answer it.

24 A I don't know.

25 Q To the immediate east of the Diamond-

1 head property, in 1976 now, are you aware of the
2 kind of terrain that existed there to the east?

3 A No direct knowledge, no.

4 Q Did you ever see the terrain to the
5 east? A Oh, yes.

6 Q What did you see then?

7 A You see a lake of water, marshland, the land-
8 fill.

9 Q Now, the landfill, where was that?

10 A Generally to the southeast.

11 Q Was it to the east too or just the
12 south? A Well, east of the oil lake

13 on a general line. I don't have a map that
14 actually shows where north is. We could look at the
15 map and see where east falls but in an easterly
16 direction. There was a landfill on a cliff.

17 Q How high was that elevation approximately?

18 A One hundred feet.

19 Q One hundred feet?

20 A One hundred feet off in the distance, yeah.

21 Q Was that substantially higher than
22 the elevation of the land on which the Diamondhead
23 business was being operated?

24 A Oh, yes, I would say so.

25 Q Now, who owned that landfill?

1 A I would have no idea.

2 Q Do you know who operated the landfill?

3 A I've seen the M.S.L.A. initials associated
4 with that landfill but who owned and operated other
5 than those initials, I don't know.

6 Q Did you ever discuss that landfill
7 with anybody from M.S.L.A.?

8 A No.

9 Q Did you ever discuss the operation
10 of the landfill with anyone from the Town of Kearny?

11 A No, absolutely not.

12 Q To your knowledge, did anyone from
13 the E.P.A. find out who the land owners were to
14 the immediate east of the Diamondhead property?

15 A No, nobody made inquiry to my knowledge.

16 Q None whatsoever?

17 A In relation to this, it was not pertinent.

18 Q And I wonder, in 1976, whether there
19 was ever -- It was ever brought to your attention,
20 any information concerning persons illegally dumping
21 oil in that M.S.L.A. dump site?

22 MR. GERMINE: I object to
23 the form of the question.

24 MR. MARTIN: Well, I only
25 ask if he knows.

1 Q Did anyone bring to your attention
2 any information concerning alleged illegal dumping
3 of oil in that M.S.L.A. or M.L.S.A. site, I should
4 say? A Not to my recollection.

5 Q No one ever told you?
6 A Not to my recollection.

7 Q Did you ever have any communications
8 with any officials connected with the Town of Kearny
9 concerning the property immediately adjacent to the
10 Diamondhead property? A Not to my
11 knowledge.

12 Q No one from the Mayor's office?
13 A Not that I recall.

14 Q No one from the municipal court?
15 A (the witness shakes head.)

16 Q No one from the health office?
17 A (the witness shakes head.)

18 Q Are your answers "no"?

19 A My answers are no and the only type of
20 things that happen and I'm trying to search my
21 memory but sometimes when you are out in a spill
22 situation, let's say if we were putting a filter
23 fence up on the Diamondhead property and two or
24 three people were there and someone might have
25 knowledge if a person may wander up and participate

Polito, cross q

1 and then may leave and the person might have been
2 there without any direct recollection of the people
3 there knowing his name even though he might have
4 introduced himself. So, not to my recollection.

5 Q I don't follow you. I didn't under-
6 stand that. A In other words, if a

7 person wandered in because something was happening
8 there and we had a chance meeting, you know, I
9 wouldn't --

10 Q But you have no official recollection,
11 no recollection of any contact with the Town of
12 Kearny officials? A No. In fact, I

13 didn't even know where Kearny -- I knew it was
14 Kearny but where the property lines were I never
15 made too much of a point of knowing where they
16 were and they may have been right there in front
17 of me. I might have seen it without observing it.
18 It's not really relevant.

19 Q I would like to pull out exhibit-A
20 again. Let me ask you, Mr. Polito, in reference
21 to exhibit-A which is the entire tract map of the
22 New Jersey Department of Transportation in relation
23 to Route 280 and its exit ramps, do you have any
24 knowledge as to who owns parcel -- who originally
25 owned parcel R-134-A on this map?

1 A No, sir.

2 Q You have no idea who owned that?

3 A (the witness shakes head.)

4 Q Do you have any idea of who originally
5 owned parcel R-3-A? A No, sir.

6 Q Do you have any knowledge as to who
7 owned parcel 3-D on this map?

8 A No, sir.

9 Q And parcel 135-B?

10 A No, sir.

11 Q And parcel 135?

12 A No.

13 Q And do you have any knowledge as to
14 who other than what's looking right at you who
15 owned parcel 3-R-3B? A For the record,
16 I would like to clarify that although I see "Town
17 of Kearny," that doesn't convey to me any ownership.
18 It just says "Town of Kearny."

19 Q Right, you had no idea in the days
20 that you were coming to the property in 1976 as to
21 who the owner was of this parcel 3-R-3-B?

22 A I was under the opinion that this was New
23 Jersey D.O.T. land and oil was spilling from New
24 Jersey D.O.T. land and we activated the fund on
25 June 23. It wasn't until June 25 that we discovered

Polito, cross

1 the open pipe and associated discharges from this
2 facility to the lake.

3 Q So, when you moved your hand over the
4 map to the immediate east of Diamondhead, I believe
5 you're indicating that you thought that everything
6 to the east was D.O.T. property?

7 A That's correct.

8 Q Is that correct?

9 A Yeah.

10 Q And that would include 135-B and 135
11 and 3-D and R-3-A? A 135-B. You
12 would have to know where Diamondhead stopped, know
13 that 135-B existed. When I put my hand on the map,
14 I'm putting in very broadly and to me that's all
15 one tract of land.

16 MR. GERMINE: I might indicate
17 for the record that the witness
18 placed his hand in the vicinity of
19 parcel R-3-A designated on this
20 map.

21 MR. MARTIN: Well, I think
22 he's also waving at 3-D.

23 MR. SHUR: And 135.

24 MR. MARTIN: Because he
25 said he didn't know of any separate

1 ownership, he thought it was all
2 D.O.T.

3 Q Is that correct, Mr. Polito?

4 A That's correct.

5 Q Did you, in 1976, have any idea who
6 the owner of the parcel designated "Diamondhead
7 Oil Refining Company" was?

8 A I assumed the ownership of Diamondhead
9 Refining Company was Diamondhead Oil Refining Company.

10 Q What was the basis of your information?

11 A Because that was the facility at the site
12 and I think there were documents directed to
13 Diamondhead Oil Refining through the S.P.C.C.
14 inquiry which -- There's a letter in the file
15 dated July 3, 1975, which Diamondhead Oil Refining
16 Company replied to Dr. Spear concerning certain
17 S.P.C.C. requirements. So, Diamondhead Oil Refining
18 was the owner of the property.

19 Q So, basically, you had some knowledge
20 of an owner existing for Diamondhead because you
21 had received an S.P.C.C. plan inquiry?

22 A We made inquiry.

23 Q Did you make inquiry at that time
24 of other owners concerning S.P.C.C. plans they
25 should have in that vicinity?

1 A Yes.

2 Q And who were those owners?

3 A In that vicinity?

4 Q Yes, in that vicinity?

5 A Well, it's based in a sense on when something
6 is observed, something becomes apparent or
7 administrative discretion -- You know, it may be
8 a spin of a random wheel where we may happen to
9 know of something or we hear of a spill report or
10 a State representative may say, "They have a
11 facility over there that has a lot of oil around it.
12 We should send out and make an inquiry of them."
13 There's no systematic approach.

14 Q Did you make an inquiry of the New
15 Jersey Department of Transportation concerning
16 whether they had an S.P.C.C. plan?

17 A For this facility?

18 Q For anything in this area?

19 A Not to my knowledge.

20 Q Well, weren't they the owners of
21 an oil lake? A Yeah.

22 MR. GERMINE: Objection to
23 the form of the question.

24 MR. MARTIN: Well, in view
25 of the fact that we all recognized

1 the D.O.T. owned a good bit of the
2 oil lake. I renew the question.

3 Q Did the E.P.A ever ask the D.O.T.
4 for an S.P.C.C. plan?

5 A I don't know what the E.P.A. did. I did
6 not know when the transfer of property occurred.
7 I've subsequently found out it occurred in 1968.
8 All's I knew is when I arrived on-site, my people
9 arrived on-site, that the -- I was told under that
10 time the D.O.T. had just obtained ownership of
11 that property and the oil lake was in the process
12 of being removed because of the construction of
13 I-280 and there's nothing in my file to indicate
14 that we made an inquiry into an S.P.C.C. plan for
15 that facility.

16 Q Would the fact -- You were informed
17 that the oil lake was going to be removed. Is
18 that true? A No, I can't tell you the
19 history of when that came to me. It could have
20 been -- Could have come when I found out that the
21 highway 280 was going right through that site and
22 that oil lake was impeding the construction of that
23 road.

24 Q But then no request was made of the
25 D.O.T. for a map? A No, because they

1 weren't -- That oil was not really being stored by
2 them. It seemed to me that someone had discharged
3 the oil onto that land at that time that I became
4 involved in June and someone had discharged the oil
5 onto their land and they were not storing it or
6 producing it or refining it or consuming it or
7 any other function according to 40-C.F.R.-12.

8 Q Was the oil part of the navigable
9 waters of the United States?

10 A That was my determination based on the
11 hydrological chain. I think I already stated that
12 and documented it.

13 Q In view of the fact that you felt
14 the oil lake was part of the navigable waters of
15 the United States, I can't understand -- I would
16 like to understand a little bit more why they
17 shouldn't have an S.P.C.C. plan?

18 A It never occurred to me that they should have
19 an S.P.C.C. plan. They were not storing the oil.
20 It seemed to me that was -- We never looked into
21 the history of this oil lake. We work in conjunction
22 with the State of New Jersey and that was being
23 handled by probably another administrative process.
24 I don't think it was wanted there by the New Jersey
25 D.O.T.

1 It seemed to me that in acquiring the
2 property because of the construction of 280, they
3 inherited an oil lake, however the oil got there.

4 Q Did oil, to your knowledge, ever leave
5 the oil lake? A That's why I took

6 action for it because it was leaving the oil lake.

7 Q And yet, the New Jersey D.O.T. never
8 gave you a plan for stopping the oil from leaving
9 the oil lake? A They wouldn't give

10 me a plan for removing it. They stopped it.

11 We talked about before about sandpiles being piled
12 on Harrison Road and some sand being eventually
13 mounded over here. I don't recall exactly the
14 details of it but we cleaned up the marshlands
15 opposite where the oil was leaving the oil lake and
16 to my knowledge, it stayed clean.

17 Q In other words, what you're saying is
18 the sandpiles that this D.O.T. put there, that was
19 a sufficient compliance with what you felt that had
20 to be done in connection with the oil lake?

21 A The discharge in terms of my understanding
22 and I don't know, stop me if I'm wrong, this is a
23 violation affecting the groundwaters of the State of
24 New Jersey. It's not a federal violation. When I
25 got involved with a federal -- With a spill incident

1 as I do now, I have to associate in my mind that it
2 does come under federal jurisdiction and then make
3 a determination. So, we do this quite alone under
4 emergency provisions. If I have some doubts about
5 it being under the jurisdiction of the federal
6 government, then I try to conduct other studies to
7 try to prove it or disprove it. The mere existence
8 of oil on land does not constitute a violation of a
9 federal law.

10 Q But the mere existence of oil in
11 sufficient quantities stored any place, if I'm not
12 mistaken requires an S.P.C.C. plan. Is that not so?

13 A Stored, I think, would imply an intent and I
14 really shouldn't discuss law because these are legal
15 questions.

16 MR. GERMINE: I think Counsel
17 is getting into matters of legal
18 interpretation that are beyond the
19 scope of the witness.

20 MR. MARTIN: I'm just trying
21 to find out what the witness under-
22 stands his function to be and when
23 an S.P.C.C. plan is required. It's
24 interesting and very relevant as to
25 what happened in 1976.

1 A I think your questions are appropriate. In
2 Kinbuck, I made the determination where they were
3 bringing oil on top of the landfill and pouring it
4 in. They were storing oil for disposal and in which
5 case they dug pits out and poured it in and stored
6 it there for a period of time.

7 Q Did you ever look at the M.S.L.A. site
8 to see if that very same thing was going on?

9 A I never looked at the M.S.L.A. site. What
10 I did was look at the perimeter and never saw any
11 evidence of oil coming down from an oil lake down.

12 Q With Counsel's indulgence, there has
13 been testimony, Mr. Polito, that that very thing
14 has been going on and my only question is did anybody
15 bring it to your attention?

16 A No, I would have acted against it if they
17 had, provided it was a violation of law that I had
18 the authority to enforce.

19 Q Well, I was only referring to this
20 kind of thing that you were talking about at Kinbuck.
21 You regard that as a violation of federal law, I
22 believe you said? A Well, Kinbuck,
23 it's a matter of public record, you know, they were
24 bringing in oil for the purposes of storing it and
25 we looked at whether they should have an S.P.C.C.

1 plan. These landfills operated by the State of New
2 Jersey in accordance with -- In accordance with
3 their requirements, they may permit it. The very
4 fact that the alleged disclosure -- Let's say they
5 were storing more, they were disposing oil in M.S.L.A.,
6 couldn't really concern me because that might be a
7 permitted landfill and governed by the State of New
8 Jersey. That, in itself, does not do anything to
9 perk me to action. I might mention, you know,
10 "Oh, does this guy have a permit to dispose of oil
11 at this site?" and the answer might be "Yes."

12 MR. SHUR: Dan, can I
13 interject just one question?

14 MR. MARTIN: Please do.

15 MR. SHUR: Mr. Polito,
16 are you aware as to whether or not
17 there were any N.P.D.E.S. permit
18 applications filed in connection
19 with the oil lake removal project?

20 THE WITNESS: No, I'm not
21 aware.

22 MR. SHUR: Based upon what
23 your knowledge is of the oil removal
24 project, based upon your knowledge of
25 that, was or should permit applications

Polito, cross

1 be filed?

2 MR. GERMINE: I'm going to
3 object to that. It's a legal
4 conclusion.

5 MR. SHUR: Off the record.

6 (A discussion took place
7 off the record.)

8 MR. GERMINE: I might point
9 out that Mr. Hallowell has already
10 been waiting for about two hours.

11 MR. MARTIN: I know. It's
12 a shame but I'm about finished now.

13 Q To your knowledge, did the E.P.A.
14 ever make any demand to the New Jersey Department of
15 Transportation to remove the oil lake?

16 A I don't know what E.P.A. has done.

17 Q Are you aware of any request by E.P.A.
18 to the N.J.D.O.T. to remove the oil lake?

19 A I would have to look at the context of Mr.
20 Gluckstern's memo that he wrote to the -- That you
21 have a copy which I didn't have to see if he addressed
22 that incident. I don't know whether he did or not,
23 and why or why not Mr. Gluckstern did what he did,
24 you'd have to ask him.

25 Q Just to clarify, the letter dated June

1 21, 1976, previously identified as exhibit D-24
2 refers to an incident on June 18, 1976, regarding
3 a spill of oil and this letter is directed to the
4 Supervisor of Loss and Commissions, New Jersey
5 Department of State. Is that the incident that you
6 were talking about earlier where you were instrumental
7 in helping with the cleanup operations and spending
8 around \$25,000? A The same spill of

9 oil. As I said before, the thing we have to do is
10 did we have jurisdiction and spillage of oil? I
11 don't know if I was aware of this letter on June 21.

12 Q Did the New Jersey Department of
13 State take any action in response to that letter as
14 far as you know? A During our cleanup
15 there were representatives there everyday, I was told,
16 and they were -- They did some dirt mounding and
17 subsequently they removed the whole oil lake. You
18 may go back on the record about S.P.C.C. If this
19 lake was still here, perhaps an administrative
20 decision might have been made that they would be
21 required to have an S.P.C.C. plan.

22 Q It does not seem unreasonable?

23 A Yeah.

24 MR. MARTIN: No further
25 questions.

MR. SHUR: Thank you, Mr.

Polito.

(A recess took place.)

(At this point, Mr. Stone
left the deposition.)

1 CLARENCE HALLOWELL, having been duly
2 sworn according to law by the Officer,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. SHUR:

5 Q Mr. Hallowell, my name is Paul Shur.
6 I'm an attorney for P.S.C. Resources and we're here
7 today to take your deposition concerning your personal
8 knowledge of facts and occurrences that are relevant
9 to a suit that's been instituted by the Department
10 of Transportation against various corporate owners
11 of property located in Kearny, New Jersey.

12 In particular, the Department of Transportation
13 is seeking to obtain damages and other fines and
14 penalties against the various other defendants in
15 connection with their operation of an oil re-refining
16 plant located in Kearny.

17 Today we're going to ask you particular
18 questions concerning your own personal involvement
19 in any of the facts and occurrences that may be
20 relevant to this litigation. Have you ever had your
21 deposition taken before? A Never had
22 a deposition. I've testified.

23 Q What we do is ask you a series of
24 questions under oath and if you know the answer, we
25 ask you to state that and the court reporter takes

1 them down. If, by any chance, I ask you a question
2 that you don't know, please state that you don't
3 know it or if I ask you a question that you are
4 confused with, please ask me and I'll be happy to
5 repeat it or restate it for you.

6 MR. SHUR: For the record,
7 Counsel will stipulate that exhibit-A
8 which is annexed to the Complaint
9 filed by the plaintiff will be
10 referred to in the course of the
11 deposition today and I think Counsel
12 will also stipulate that the particu-
13 lar references on exhibit-A as to
14 identification of particular pieces
15 of property are accurate in the
16 context of this litigation. Is that
17 correct, Mr. Germiné?

18 MR. GERMINÉ: I have so
19 stipulated and continue to do so.

20 Q Mr. Hallowell, can you state for us
21 your position with the Department of Transportation?

22 A Yes, I'm chief of the Bureau of Titles.

23 Q And very briefly, can you describe to
24 us what you do? A Our main function is
25 to examine, do title searches, and examine title to

1 property being acquired by the Department to insure
2 the ownership and any liens incumbered against the
3 property.

4 Q Do you have any hand in the decision
5 as to whether or not a piece of property is going to
6 be acquired? A No, I do not.

7 Q In other words, the decision is already
8 made and then they come to your department and you
9 make the inspection of the records to determine the
10 title to the particular piece?

11 A Yes, we just do the title search.

12 Q Who makes the determinations --
13 Strike that question.

14 Who made the determinations on exhibit-A as
15 to the labels of the particular pieces of property
16 we see here? Is it your Department or is it --

17 A No, it's not my department. I can only
18 assume that the engineers --

19 Q Are you familiar with the work that
20 your department did on the parcels that are indicated
21 on this particular map?

22 A You mean as far as construction?

23 Q No, as far as on the searching of the
24 title, are these particular lots familiar to you?

25 A Yes, somewhat.

1 Q Did you, yourself, have the opportunity
2 or do you or did you, I should say, have the
3 opportunity to inspect any of the particular pieces
4 of property insofar as it may have related to the
5 question of title? A I would have
6 apparently reviewed the title along with certifying
7 title to the State.

8 Q Were you actually at the site of any
9 of these pieces of property?

10 A No.

11 Q Do you review the assessments made by
12 land appraisers as to the value of pieces of property?

13 A No, I do not.

14 Q Is there someone else in your department
15 that reads these reports? A Yes, the
16 Bureau of Appraisal.

17 Q Is that part of your department or is
18 that a separate department?

19 A It's a separate department. It's part of the
20 Right-of-Way Bureau but not my department.

21 Q Are you familiar as a general matter
22 when the particular properties were acquired by the

23 D.O.T.? A I don't know the exact
24 dates.

25 Q But your records would reflect that

1 these particular properties were acquired?

2 A Yes.

3 MR. SHUR: May I have this
4 marked, please.

5 (A deed was received and
6 marked D-98 for identification by
7 the Reporter.)

8 Q Mr. Hallowell, I show you what's been
9 marked D-98 for identification and I ask you if
10 you can look at this and identify it for us if you
11 can, please? A It looks to me like
12 a copy of a deed to the State of New Jersey
13 conveying parcels 135 and 135-B on Route 280, Section
14 8.

15 Q Have you seen this deed before?

16 A I may have, I don't know. I would assume
17 that I have.

18 Q In connection with your searching of
19 the title to various pieces of property, does your
20 department bring it right up to date as far as the
21 conveyance into the Department of Transportation
22 or is that another department?

23 A No, we would search title to the conveyance
24 to the Department.

25 Q Including the filing of the deed to

Hallowell, direct

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1 the Department of Transportation?

2 A Yes.

3 Q Now, would you read for us into the
4 record the date stated on the deed that is represented
5 for the conveyance therein.

6 A It's dated the 25th day of February, 1976.

7 Q And what parcels are listed on the
8 deed? A Parcel 135 and 135-B.

9 Q And can you identify where those
10 parcels are located on the map, please?

11 A This would be parcel 135 and this looks like
12 135-B.

13 Q Is it correct to say that these are
14 two parcels that border on what appears to be
15 Harrison Avenue on the map?

16 A This is Harrison Avenue, yes.

17 Q And are they located on the southerly
18 side of Harrison Avenue? A Yes.

19 Q And is it fair to say that they lie
20 on the east of what appears to be property indicated
21 as being called "Diamondhead Oil Refining Company,
22 Inc."? A Yes.

23 Q Do any of the parcels that are referred
24 to in the deed border on the Diamondhead property?

25 A Yes.

1 Q And is your answer based on this map
2 or is your answer based on your own knowledge or
3 recollection? A No, it would have to be

4 based on the map.

5 Q Now, insofar as your department
6 searched the title for these particular pieces of
7 property, is your department concerned with the
8 condition of the property itself insofar as it
9 may or may not relate to title?

10 A No, physical condition we're not concerned
11 with.

12 Q In other words, you don't read any
13 documents or conduct any inspections as they may
14 relate to title? A Excuse me, I don't

15 understand what you mean.

16 Q Well, let me restate the question.

17 How do you determine whether or not there are,
18 say, easements or liens on the property other than
19 by going through the record books?

20 A The only other way is information that the
21 district negotiator advises of.

22 Q Do you conduct any other investigations
23 as to the condition of the property insofar as it
24 may relate to title? A No, not from

25 the Title Bureau.

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Q What about locations of streams or other waterways on the property?

A No, no one from the Title Bureau.

Q Did your department actually prepare the deed to the Department of Transportation?

A Yes.

Q And who was the individual who prepared this? A John J. Seaccetti.

Q Is he an employee of yours?

A Yes.

Q How does your department determine what the consideration is for the deed?

A The consideration would be taken from either the agreement of sale that the parties had entered into with the Department.

Q And which section of the E.O.T. negotiates the contract of sale?

A That would be through the Bureau of Acquisition, district supervisor. I'm not too familiar with that.

Q Is that the same department that makes the determination as to the fair value of the property?

A No.

Q What department is that?

A The fair market value would be determined by the Appraisers, Bureau of Appraisal.

1 MR. SHUR: Off the record.

2 (A discussion took place
3 off the record.)

4 Q Are you, Mr. Hallowell, personally
5 familiar with a piece of property referred to as

6 R-3-A on the map? A I can identify it on
7 the map.

8 Q Alright, and from your own recollection,
9 are you familiar as to when this particular piece
10 of property was acquired by the Department of

11 Transportation? A Not offhand I'm not.

12 MR. SHUR: Off the record.

13 (A discussion took place
14 off the record.)

15 MR. GERMINE: For the
16 record, I'm willing to stipulate
17 all the dates of taking that are
18 set forth in the first count of the
19 Complaint, if that will save you
20 time.

21 MR. MARTIN: The manner is
22 important, too. Like this was a
23 deed, a negotiated deal, I guess.

24 MR. GERMINE: Some of them
25 were negotiated but the Town of Kearny

1 parcel 3-A was a condemnation so the
2 date of physical possession would
3 have been from the declaration of
4 taking the day when we had the right
5 to possession.

6 MR. SHUR: Right, which is
7 March 8, 1968.

8 MR. GERMINE: Right.

9 MR. SHUR: Alright, for the
10 record, Counsel stipulate that parcel
11 R-3-A was acquired and title was
12 vested in the Department of Transpor-
13 tation on March 8, 1968. Is that
14 correct?

15 MR. GERMINE: Yes, I will so
16 stipulate what the proviso that
17 the declaration of taking might have
18 been filed the day before that but
19 the date of declaration of taking
20 in my recollection is on or about
21 March 8, 1968 and that would have
22 been the date when the D.O.T. had
23 the right to possession of parcel
24 R-3-A.

25 Q Mr. Hallowell, did you have any role

1 to play in determining the value of this particular
2 piece of property as opposed to the other one?

3 A No, I did not.

4 Q Is your function basically the same
5 as you previously described to us with relationship
6 to parcel 135 and 135-B?

7 A Yes.

8 Q So, you had no personal knowledge of
9 involvement in determinations as to any settlement
10 or negotiation for the fair market value of the
11 properties. Is that correct?

12 A That's correct.

13 Q Again, as I asked you earlier with
14 regard to the other parcels, did you have the
15 opportunity to obtain any knowledge as to the
16 condition of the property itself in your examination
17 of title? A No.

18 Q And that, again, would have been the
19 Bureau of Appraisal? A Who would make
20 the fair market value, yes.

21 Q Do you have any knowledge as to
22 whether or not in 1968 there was a body of water
23 located on parcel R-3-A?

24 A No, I have no knowledge.

25 Q Do you have any knowledge as to whether

1 or not there was any oil located on any portion of
2 parcel R-3-A in 1968? A I have no
3 knowledge of that.

4 Q Did you subsequent to March 8, 1968,
5 acquire any knowledge as to whether or not there
6 was any oil or water located on that parcel R-3-A?

7 A No.

8 MR. SHUR: Counsel, will you
9 stipulate for the record that title
10 to parcel 3-R-3-B, 3-C and 3-D was
11 asquired by the Department of
12 Transportation of May 19, 1976?

13 MR. GERMINE: I don't have
14 the Complaint before me but I believe
15 that date is in -- If that is the
16 date set forth in the first count
17 of the Complaint then I will so
18 stipulate.

19 (A discussion took place
20 off the record.)

21 MR. GERMINE: Now, if this
22 was obtained from the property owner
23 by way of negotiated agreement, then
24 the relevant date as far as the
25 Department of Transportation's right

1 of possession would have been the date
2 of the deed but I don't know whether
3 the -- There was a declaration of taking
4 title for these parcels. That's some-
5 thing you have to ask him.

6 Q Mr. Hallowell, could you tell us if
7 there was a declaration of taking insofar as parcel
8 3-R? A I have no idea.

9 MR. SHUR: Let me have this
10 marked.

11 (A deed was received and
12 marked D-99 for identification by
13 the reporter.)

14 Q Mr. Hallowell, I show you what's been
15 marked D-99 for identification. Could you identify
16 that for us, if you can. A It's
17 a copy of a deed from the Town of Kearny to the
18 State of New Jersey for parcel 3-R-3-B, 3-C, and
19 3-D on Route 280, Section 8.

20 Q Was that deed prepared by the Depart-
21 ment of Transportation? A I would
22 assume so. It's not a full copy.

23 Q And can you identify it for us on
24 the map where these particular parcels are located?
25 A Yes, this is R-3-B, right here the south side

1 borders Harrison Avenue; 3-C which looks like it's
2 on the north side of Harrison Avenue; and 3-D is this
3 parcel in here. (The witness indicates.)

4 Q Is 3-D due west of the Diamondhead
5 property according to that map?

6 A I would say it's east.

7 Q Can you state from your own knowledge
8 or from looking at the map whether or not parcel
9 3-D borders on property owned by the Diamondhead
10 Oil Refining Company, Inc.?

11 A From the map it does adjoin Diamondhead.

12 Q Now, from your own involvement in the
13 acquisition of these properties, did you have the
14 opportunity or occasion to obtain any information
15 as to the condition of the property itself?

16 A No.

17 Q Subsequent to the acquisition of these
18 properties, did you have the opportunity to obtain
19 any knowledge as to the condition of the properties?

20 A No, I did not.

21 Q Did any of your reports given to you
22 refer to the existence of oil or an oil lake or water
23 on any of these properties?

24 A I have no knowledge.

25 Q Referring you now to the consideration

1 listed on the deed, Mr. Hallowell, do you have any
2 idea as to how that sum was computed or where it came
3 from? A I would say if it's in the

4 agreement, I would assume it came from the agreement
5 in the sale.

6 Q But you have no personal knowledge
7 as to how that sum was derived?

8 A No, I do not.

9 Q In the course of your responsibilities,
10 did you ever obtain any knowledge as to any alleged
11 dumping or discharges of oil or other hazardous
12 materials on any of these properties acquired by the
13 State Department of Transportation?

14 A No, I have no knowledge of that.

15 Q Who is the individual as far as you're
16 concerned who would be most knowledgeable from the
17 Bureau of Appraisers regarding the condition of the
18 properties themselves and the valuation was made
19 for each of the acquisitions?

20 A I would have to assume it would probably
21 be Horace Woolverton if anybody.

22 Q Can you spell his last name for us?

23 A W-O-O-L-V-E-R-T-O-N. He's the Chief of
24 Bureau of Appraisers.

25 Q And as far as you're personally aware,

1 he's the individual who's most knowledgeable of
2 this subject area? A I really don't
3 know. I would have to assume so.

4 Q Did any of your employees have the
5 opportunity or were they required to review any of
6 the documentation that may or may not be prepared
7 with regard to the value of the property?

8 A No, did not.

9 Q So, it's not essential for the function
10 your department serves? A No, for
11 setting the fair market value it has nothing to do
12 with us.

13 Q Are you aware as to the location of
14 a landfill in the vicinity of these properties that
15 we've been referring to? A I have no
16 knowledge of that.

17 Q When the properties were purchased by
18 the Department of Transportation, was an investiga-
19 tion made as to actually who occupied as opposed to
20 who the record owners were?

21 A I would assume that was done.

22 Q Now, in the course of the acquisition
23 of any one of these particular pieces of property,
24 was it the practice of the Department of Transporta-
25 tion to notify any adjoining landowners that a taking

1 was about to take place? A Adjoining
2 landowners?

3 Q Yes. A This I wouldn't
4 have any knowledge of.

5 Q In other words, that's again something
6 that was outside the scope of the function that your
7 department served at that time?

8 A Yes.

9 Q Are any future acquisitions intended
10 by the Department at the present time in that area?

11 A I have no knowledge.

12 Q Which department makes that determination,
13 may I ask? A I would assume someone
14 in the Engineering Department.

15 Q Is there any one individual in
16 particular who you can refer us to?

17 A The only one I can refer perhaps is Jack
18 Friedenrich, the Chief Engineer.

19 MR. SHUR: Off the record.

20 (A discussion took place
21 off the record.)

22 CROSS EXAMINATION BY MR. MARTIN:

23 Q Mr. Hallowell, my name is Dan Martin and
24 I'm Counsel for Newtown Refining Corporation which is
25 the current owner of the property that is referred to

1 there as Diamondhead Oil and it's a co-defendant in
2 this case so I'll be asking questions if you don't
3 mind for a few minutes and we'll try to get you out
4 of here as fast as possible.

5 You mentioned that a Mr. Horace Woolverton,
6 Chief of the Bureau of Appraisals, would be
7 knowledgeable on values and how the land was valued
8 as it is acquired. A I would assume
9 that since he is in charge of the Bureau of
10 Appraisals; now, whether he did the actual appraisal
11 or not, I don't know.

12 Q Was he in that role in 1968 when
13 R-3-A was acquired? A I believe he
14 was. I couldn't say for sure.

15 Q Who was his predecessor? Do you know?

16 A I really don't know.

17 Q But he was chief of the Bureau of
18 Appraisals in 1976? A Yes.

19 Q Who else in the Department of
20 Transportation would be knowledgeable on the manner
21 of appraising property that is either going to be
22 bought by a negotiated purchase or acquired by
23 condemnation? Who else would be key people in that
24 appraisal function? A Those that are
25 knowledgeable of appraisals would be Mr. Woolverton

1 and probably our director, Mr. Hyde.

2 Q What is his title?

3 A He's Director, Division of Right-Of-Way.

4 Q And as such, is he the immediate
5 superior of Mr. Woolverton and your immediate
6 superior? A Yes.

7 Q And so is it fair to say that your
8 department and Mr. Woolverton's department exist
9 side by side with different functions but both
10 report to Mr. Hyde? A Yes.

11 Q Is there anyone else besides Mr. Hyde
12 and Mr. Woolverton who would have overall responsib-
13 ility for purchase prices?

14 A I would have no other knowledge other than
15 those two.

16 Q Who in the Department of Transportation
17 appears in court on valuation questions on
18 condemnations? A I would assume it's
19 the appraiser who did the appraising would be the
20 ones who would testify.

21 Q Did Mr. Woolverton appear in court on
22 valuation questions on condemnation cases?

23 A I have really no knowledge of that.

24 Q How about Mr. Hyde?

25 A I would have no knowledge of that.

1 Q Does your bureau conduct title
2 searches prior to acquiring property under a
3 negotiated purchase? A Yes, we try to
4 have the searches done sometimes before, sometimes
5 during the negotiations.

6 Q How is that title search conducted
7 by the D.O.T.? A Well, upon receipt
8 of the maps of parcels to be acquired, we have
9 searchers in the record room that will do a title
10 search and the title comes into our office and it's
11 examined and a title prepared.

12 Q A chain of title, is that an abstract
13 which would include judgments and liens and anything
14 else affecting title? A Yes.

15 Q And are the title searchers full-time
16 employees of the D.O.T.?

17 A Yes, they are.

18 Q Are they lawyers?

19 A No.

20 Q Is that the only title search that the
21 bureau has prior to taking title?

22 A Yes, that's the title search.

23 Q It's not verified by independent title
24 search companies? A No.

25 Q And that's your department?

1 A My bureau.

2 Q Or your bureau?

3 A Yes.

4 Q What record exists of the title
5 search -- Let's take R-3-A which was acquired in
6 1968 as a result of a judgment in condemnation.
7 What record would exist of a title search there?

8 A You mean as far as our records would be?

9 Q Yes. A We would have
10 the chain of title in our file.

11 Q And you would keep that permanent
12 record? A Yes.

13 Q And I take it the same answer would
14 apply in the case of 3-D, for example, which was
15 a negotiated purchase from the Town of Kearny?
16 You would have a title search on that and you would
17 have a permanent record? A Yes.

18 Q And that permanent record would show
19 any judgments or liens or claims of record against
20 that property? A Yes.

21 Q Any lis pendens or whatever they call
22 it? A Yes.

23 Q That would all be in there?

24 A Yes.

25 Q In the course of acquiring a piece of

1 property for the State D.O.T., whether it's
2 condemnation or negotiated purchase, does anyone
3 from your department have a physical review of the
4 property? A I would think so.

5 Q Especially a large piece of property?

6 A Yes.

7 Q What record is made of that?

8 A I would believe it would be through the
9 Bureau of Property Relocation. They may -- Are you
10 talking about who was on the property and so forth?

11 Q Yes. A Yes, the Bureau
12 of Property Relocation.

13 Q Did that bureau exist in 1968 when
14 R-3 was acquired? A I believe it did.

15 Q What is the function of that bureau,
16 to your knowledge? A The function in
17 to inspect the property taking possession by the
18 State, if anyone is there that has to be relocated,
19 to help them relocate, things of that nature.

20 Q And I take it that that bureau would
21 make reports of its investigation?

22 A Yes.

23 Q And those reports would be permanent
24 records also? A I would believe so.

25 Q Is there a way that the Bureau of

1 Property Relocation and your Bureau of Title, is
2 there a way that you inter-react with each other?

3 A Well, we all operate, you know, independently
4 but as one function in the acquisition of property.
5 We all have our particular functions to perform.

6 Q If a lease exists but it is not of
7 record, not a filed lease of record and is discovered
8 by the Bureau of Property Relocation because they
9 see the tenant on the property, is it the practice
10 of the Bureau of Title to conduct a search against
11 that tenant? A A search? No, we would

12 require release of the lessee before closing.

13 Q What form does that release take?

14 A It could be a waiver, it could be a deed of
15 release.

16 Q A deed of release, would that get
17 recorded? A The deed would, yes.

18 Q Does the Bureau of Property Relocation
19 in its inspection include an inspection of the
20 physical characteristics as regards terrain as
21 opposed to, say, tenants or buildings on the property?

22 A I wouldn't really know. I couldn't answer
23 that.

24 Q You're aware of riparian rights, of
25 course? A Yes.

1 Q What effort is made in your department
2 to take account of riparian rights in a particular
3 piece of property? A Well, if there
4 are riparian parcels, we would have to negotiate
5 them and acquire them the same as any other property.

6 Q Who would you negotiate with?

7 A Department of Environmental Protection.

8 Q How about the United States Government?

9 A I've never seen it done before.

10 Q After an acquisition of rights from
11 the Department of Environmental Protection, how is
12 that recorded or reflected?

13 A There's a riparian agreement delivered to
14 the Department of Transportation which is recorded
15 the same as a deed.

16 Q And it looks like a deed, possibly?

17 A Yes, it has all the Council members and
18 everything else signed on it.

19 MR. MARTIN: Do we have that
20 aerial photograph, Tom?

21 MR. GERMINE: I have the aerial
22 photograph that's been marked D-45.

23 Q This is an aerial photograph which has
24 been or a copy of it has been marked at an earlier
25 deposition and I will also refer to a copy of a body

1 something to do with the title factor
2 which wouldn't be apparent from these
3 photographs.

4 Q What additional information would you
5 need in order to answer my question which is what
6 procedures does the Bureau of Titles have to go
7 through in order to acquire a body of water such as
8 the one represented in front of you?

9 A Well, if it's riparian land and so designated
10 by D.E.P. it would have to be acquired from D.E.P.
11 as riparian land from the State of New Jersey which
12 a private lake -- If it's not titled and not
13 claimed by the State, it can, if it's a private lake
14 and it's not claimed by the State of New Jersey as
15 being riparian, it can be acquired from the private
16 owner.

17 Q When is the determination made to
18 make an inquiry of D.E.P. as to riparian rights?

19 A That would be up to the engineers when they
20 develop the maps as to what is claimed to be riparian.

21 Q Who makes the decision as to what is
22 claimed to be riparian? A Some one
23 from Environmental Protection.

24 Q Who notifies the Department of
25 Environmental Protection that there is a determination

1 necessary? A I wouldn't know. I can
2 only assume that it would be through engineering.

3 Q How did the Bureau of Titles
4 ascertain that there is a question of riparian rights?

5 A From the maps that are prepared by the
6 Department's engineers.

7 Q What maps are they?

8 A General property parcel maps for acquisition
9 because riparian lands are set up with what we call
10 T-parcels.

11 Q What does that mean?

12 A That's an engineering designation but it is
13 the -- What our engineers designate as riparian
14 parcels.

15 MR. GERMINE: For the purposes
16 of clarifying that, the parcel number
17 will be always preceded by a T and
18 that designates a riparian parcel.

19 MR. MARTIN: Thank you.

20 Q I've never seen this type of map.
21 Does this type of map exist in every case, an
22 engineering map? A General property
23 parcel maps, yes.

24 Q That's different from exhibit-A?

25 A Well, this isn't an entire tract map but it

1 would be a map like this. These are what our
2 engineers designate as riparian, T.

3 Q This is an entire tract map and what
4 is the other one, the other map is called an
5 engineering map? A No, it's just a
6 highway Department General Property Parcel Map.

7 Q General Property Parcel Map, and
8 does it have topographical features as well as
9 riparian features? A No, it shows the
10 parcel to be acquired.

11 Q But you do show riparian features?

12 A We show riparian parcels.

13 Q In connection with a condemnation
14 such as the condemnation of R-3-A before you, does
15 the Department of Transportation have a topographical
16 map in addition to the entire tract map and the
17 engineering property map?

18 A I have no idea.

19 Q Does the engineering property map --

20 A General Property Parcel Map.

21 Q Yes, does that have any features that
22 are different from the entire tract map in front of
23 you?

24 A I would say basically it would
25 be the same. They'd probably have it at a different
scale.

1 Q But it would show bodies of water?

2 A It would show riparian property, yes.

3 MR. GERMIER: I think for the
4 purposes of clarification, the witness
5 in responding to that question is
6 drawing a distinction between riparian
7 parcels and bodies of water and I
8 think from his own personal knowledge
9 he has no knowledge as to the
10 correspondence, whether a riparian
11 parcel corresponds to a physical
12 barrier of water.

13 Q I'm just certain that the Department
14 of Transportation which, obviously, is very careful
15 when it acquires parcels for a major highway, must
16 have a map which shows a body of water that was six
17 or eight acres which obviously doesn't show on the
18 entire tract map. There must be another map that
19 shows a body of water whether or not it's riparian.
20 That's what I'm trying to get at.

21 A I would have no knowledge.

22 MR. MARTIN: I would call
23 upon Counsel for the plaintiff to
24 inquire to see -- Well, first, I
25 would like if we could take a look

1 at the General Property Parcel Map
2 but also any other map which would
3 show the existence of the body of
4 water which we have been referring
5 to as the oil lake which, of course,
6 does not appear on the entire tract
7 map and possibly doesn't appear on
8 the General Property Parcel Map.

9 MR. GERMINE: It is my
10 understanding that the general tract
11 map reflect the same information as
12 the General Property Parcel Map but
13 the General Property Parcel Map is
14 for individual parcels whereas the
15 tract maps indicate the entire.

16 THE WITNESS: Yes, it's at a
17 smaller scale so there's more property
18 shown on it where the other has only
19 one or two parcels shown.

20 MR. GERMINE: And as far as
21 the individual Property Parcel Maps
22 they are in the files of the Title
23 Bureau which you have had an opportunity
24 to review. They're usually attached
25 to the Complaint in the taking if it

1 happens to be a condemnation action
2 or to the agreement deed of sale.
3 They would be in the files of the
4 Title Bureau for these particular
5 parcels. In reviewing those files
6 with the attorney for Newtown,
7 defendant corporation, I found no
8 topographical maps as far as you've
9 referred to them prepared by the
10 Department of Transportation.

11 As far as physical
12 representations of the property, I
13 have seen photographs which were
14 annexed to the various appraisal
15 reports, none of which distinctly
16 indicate the boundaries of the oil
17 lake and I believe you've seen those
18 photographs as well as I but I can
19 state that my review of the files has
20 revealed no overall map showing the
21 limits of the oil lake. If
22 subsequent to this day I find such
23 a map, I will make it available.

24 Q I would ask one other question, Mr.

25 Hallowell: does anyone in the Department of

1 Transportation prepare a survey of property to be
2 acquired or hire outside surveyors to prepare surveys?

3 A This I would have no knowledge of.

4 Q Does the Department of Transportation
5 acquire title insurance when it acquires property?

6 A As a general rule, no. We do our own title
7 work. In rare instances, we may have to utilize
8 a title company.

9 Q When you utilize a title company,

10 is a survey obtained? A No, the
11 General Property Parcel Maps are utilized in our
12 title searches.

13 Q The usual practice of a title insurance
14 company is to require a survey when it issues title
15 insurance? A Yes.

16 Q Are you telling us and I don't know
17 that much about surveying or maps, obviously, are you
18 telling us that the entire tract map and the General
19 Property Parcel Map are in lieu of a survey, that
20 they are deemed to be equivalent to the survey?

21 A Yes, I would say equivalent to the survey.

22 Q Is the entire tract map certified by
23 a surveyor? A This I would have no
24 knowledge.

25 Q Alright, Howard, Needles, Tammen &

1 Bergendorff, Consulting Engineers, Fairfield, New
2 Jersey, has its name appearing on here. Would they
3 be surveyors or engineers that would be surveying
4 this map to your knowledge?

5 A I would assume so. That's a question I
6 really can't answer, not being familiar with the
7 engineering and how they operate.

8 Q Do any maps exist in the Department
9 of Transportation relating to property it acquires
10 which contain metes and bounds descriptions and
11 courses, compass courses?

12 A There may be, I don't know.

13 Q Who would know?

14 A I don't know who in the department. You mean
15 as far as describing property being acquired?

16 Q Yes. A Someone from the
17 engineering.

18 Q And is there a separate Division of
19 Engineering or Bureau of Engineering?

20 A Well, the Chief Engineer would be Jack
21 Friedenrich.

22 Q He's the Chief Engineer and yet, he
23 is not on Mr. Hyde's staff?

24 A No.

25 Q Does he exist at the same level under

1 the Commissioner of Transportation as Mr. Hyde?

2 A I believe he'd be probably a step higher.

3 Q As Chief Engineer, does he have a

4 department? A He would have several

5 engineering functions. I would report to him.

6 MR. MARTIN: Alright, I

7 would ask Counsel that obviously

8 Mr. Hallowell doesn't know the

9 answers to what I'm trying to get

10 at. I believe from other infor-

11 mation from talking with people

12 who are familiar with acquisitions

13 of property in condemnation

14 proceedings that there should be

15 in existence the normal kind of

16 survey where you have the exact

17 distances, the metes and bounds

18 description, and the course dis-

19 tances as proper conveying practice.

20 MR. GERMINE: At times I've

21 seen those descriptions as part of

22 Complaints and Declaration of Taking

23 but not always. Mr. Hallowell

24 indicated that sometimes it's merely

25 done by annexing a parcel map to the

1 Complaint.

2 Now, in this particular case,
3 I'm not aware of whether or not
4 such a description was in the
5 declaration of taking. I don't know
6 whether you've had opportunity to
7 see that. If you haven't I'll look
8 at that document because I do have
9 a copy of it and I might add that I
10 think it was in our latest moving
11 papers, a copy of the Declaration of
12 Taking and the Complaint for R-3-A
13 were included so, you might refer
14 to that and see whether there was a
15 metes and bounds description in there.
16 If not, then as Mr. Hallowell says, it
17 was just done by means of the parcel
18 map.

19 MR. MARTIN: It's almost
20 inconceivable that normal surveys
21 wouldn't exist because you have
22 neighboring landowners and they'll
23 have their surveys if they encroach
24 upon your land and you'll certainly
25 want your surveys to go against them.

1 So, it must exist. It occurred to
2 me that I keep looking at the entire
3 tract map and I realized it's too
4 large, we need something smaller with
5 more detail.

6 MR. GERMINE: Well, perhaps
7 these maps, I'm not familiar with
8 how these are prepared but perhaps
9 they are prepared from a metes and
10 bounds survey. If that were the case,
11 I'm not sure whether the original
12 survey from which the R-3-A is pre-
13 pared would be in existence but I
14 could inquire into that.

15 MR. MARTIN: That's your
16 answer right there. They have to
17 prepare these from real surveys
18 because they have too many neighboring
19 landowners to worry about.

20 MR. GERMINE: I would imagine
21 so but I don't know exactly. I will
22 inquire as to that but as a matter
23 of whether that is in existence now,
24 it might not be. We'll have to find
25 out.

1 MR. MARTIN: We would
2 appreciate that, Tom, and also
3 not only on R-3-A but on parcel
4 3-D which was the 1976 taking
5 even if the surveys for the 1968
6 taking of R-3-A have disappeared
7 somehow, if there were surveys
8 on 3-D, possibly they're still in
9 existence because it was only 1976.

10 MR. GERMINE: If such surveys
11 exist, I'll attempt to locate them.

12 MR. MARTIN: I have no
13 further questions.

14 MR. SHUR: I just have one
15 further question which is something
16 I picked up from Mr. Martin's
17 questioning.

18 RE-DIRECT EXAMINATION BY MR. SHUR:

19 Q Do you know for a fact as to whether or
20 not independent title insurance was obtained for any
21 one of the tracts that we've been referring to today?

22 A I don't believe so.

23 MR. SHUR: May we make a re-
24 quest on the record of you and Mr.
25 Germiné to see whether or not that

1 is so for confirmation and if there
2 are any records as to an insurance
3 policy or any other attachments to
4 an insurance policy that they be
5 produced by way of discovery to us?

6 MR. GERMINE: Alright.

7 MR. SHUR: Thank you.

8 (A discussion took place
9 off the record.)
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C E R T I F I C A T E

I, ROSE PAPA

a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination

I, ROSE PAPA, of the County of Essex, State of New Jersey
was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Rose Papa

Notary Public of the State of New Jersey

My Commission expires 5/24/43